UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1
REGISTRATION STATEMENT

Under
The Securities Act of 1933

Livongo Health, Inc.
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

8090
(Primary Standard Industrial Classification Code Number)

26-3542036
(L.R.S. Employer Identification Number)

150 West Evelyn Avenue, Suite 150
Mountain View, California 94041
(866) 435-5643

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Zane Burke
Chief Executive Officer
Livongo Health, Inc.
150 West Evelyn Avenue, Suite 150
Mountain View, California 94041
(866) 435-5643

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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 to Section 7(a)(2)(B) of the Securities Act. ☐

CALCULATION OF REGISTRATION FEE

<table>
<thead>
<tr>
<th>Title of Each Class of Securities to Be Registered</th>
<th>Proposed Maximum Aggregate Offering Price(1)(2)</th>
<th>Amount of Registration Fee</th>
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<tr>
<td>Common Stock, $0.001 par value per share</td>
<td>$100,000,000</td>
<td>$12,120</td>
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(1) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

(2) Includes the aggregate offering price of additional shares of our common stock that the underwriters have the option to purchase solely to cover over-allotments, if any.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant will file a further amendment which specifically states that this Registration Statement will thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement will become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.
Livongo Health, Inc. is offering shares of its common stock. This is our initial public offering, and no public market currently exists for our shares. We anticipate that the initial public offering price will be between $ and $ per share.

We have applied to list our common stock on The Nasdaq Global Select Market under the symbol “LVGO.”

We are an “emerging growth company” as defined under the federal securities laws. Investing in our common stock involves risks. See “Risk Factors” beginning on page 17.

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<th>PRICE $</th>
<th>A SHARE</th>
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<tr>
<th>Per Share</th>
<th>Price to Public</th>
<th>Underwriting Discounts and Commissions(1)</th>
<th>Proceeds to Livongo</th>
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<tbody>
<tr>
<td>Total</td>
<td>$</td>
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(1) See “Underwriters” for a description of the compensation payable to the underwriters.

We have granted the underwriters the right to purchase up to an additional shares of common stock solely to cover over-allotments, if any.

The Securities and Exchange Commission and state regulators have not approved or disapproved of these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares of common stock to purchasers on , 2019.

MORGAN STANLEY
PIPER JAFFRAY
CANACCORD GENUITY

GOLDMAN SACHS & CO. LLC
KEYBANC CAPITAL MARKETS

J.P. MORGAN
NEEDHAM & COMPANY

SYB LEERINK

, 2019
Uses technology to transform the experience of living with a chronic condition. We’ve done this by creating a consumer-first, data-driven digital health platform that is personalized and empowering.

Our solutions use smart connected devices, personalized digital guidance, and 24x7x365 access to health professionals, making it easier for people to stay healthy.

Company Metrics & Results¹

- 679 Clients with 164,000 Members
- Q1 2019 50,000 new Members added
- 20% of the Fortune 500
- 4 of the top 7 Payers, 2 of the largest PBM
- 96% Client Retention
- 120% YoY SaaS-Based Recurring Revenue Growth

See what Livongo looks like inside.

Members are healthier.

DIABETES¹
0.8  HbA1c Reduction

HYPERTENSION¹
10 mmHg Systolic Blood Pressure Reduction

WEIGHT MANAGEMENT¹
7% Year 1 Weight Loss

DEPRESSION¹
55% of Participants see Measured Clinical Improvement

Clients are happier.

$1,908

per participant per year gross medical savings in diabetes
Livongo Uses technology to transform the Members love us. experience of living with a chronic condition. We've done this by creating a consumer-first, data-driven digital + health platform that is personalized and empowering. Our solutions use smart connected net promoter score devices, personalized digital guidance, and 24x7x365 access to healthcare. Members are healthier.

- DIABETES
- HYPERTENSION

HbA1c Reduction
Systolic Blood Pressure mm/Hg
WEIGHT MANAGEMENT
DEPRESSION

% Year Weight Loss
Clinical Measured Company Metrics & Results
7 55 Improvement
measurable and sustained clinical improvements
679 Clients with 164,000 Members Q1 2019
50,000 new Members added
Clients are happier.
20% of the Fortune 500
4 of the top 7 Payers,
2 of the largest PBMs
96% Client Retention
$1,908 120% YoY SaaS Based Recurring Revenue Growth
See what Livongo net savings looks like inside.

See the section titled “Business” for additional details regarding these statistics.
We use data science for Member Acquisition, Onboarding, Retention. We meet our Members where they are with actionable, personalized and timely support. Our health nudges and personalized insights drive measurable, sustainable health outcomes. Our Members lead better and healthier lives resulting in lower health care costs.
Through and including , 2019 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

Neither we nor any of the underwriters have authorized anyone to provide any information or to make any representations other than those contained in this prospectus or in any free writing prospectuses we have prepared. Neither we nor any of the underwriters take responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of its date, regardless of the time of delivery of this prospectus or of any sale of our common stock.

For investors outside the United States: Neither we nor any of the underwriters have done anything that would permit our initial public offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of our common stock and the distribution of this prospectus outside the United States.
PROSPECTUS SUMMARY

This summary highlights selected information that is presented in greater detail elsewhere in this prospectus. This summary does not contain all of the information you should consider before investing in our common stock. You should read this entire prospectus carefully, including the sections titled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and the related notes thereto included elsewhere in this prospectus, before making an investment decision. Unless the context otherwise requires, the terms "Livongo," "the company," "we," "us," and "our" in this prospectus refer to Livongo Health, Inc. and its consolidated subsidiaries.

LIVONGO HEALTH, INC.

Overview

Our mission is to empower people with chronic conditions to live better and healthier lives. The advancement of technology and data science has transformed nearly every industry except healthcare to create new, consumer-first experiences that are both personalized and empowering. Livongo is pioneering a new category in healthcare, called Applied Health Signals, which is transforming the management of chronic conditions.

In 2014, 147 million adults in the United States had a chronic condition and over 40% had two or more chronic conditions. However, the current U.S. healthcare system is not designed to continually care for people with chronic conditions. People are left to manage these conditions on their own with limited guidance. While new digital health devices may assist with tracking and gathering data on their condition, they fail to provide actionable feedback. As a result of receiving ineffective care, many people are unhappy, feel alone and disconnected, and are not getting healthier, resulting in higher costs for employers, people with chronic conditions, and the people who pay for their care.

Enter Livongo. We started with diabetes, which impacts more than 30 million Americans and hundreds of millions of people worldwide. Many people with diabetes are asked to check their blood glucose regularly, and while they gather this information, they don’t have any context to interpret the data. They often receive minimal guidance, counseling, or affirmation of how they are doing. This is just one part of a process that makes having diabetes confusing, complex, and costly. With Livongo for Diabetes, the experience is wholly different. Members receive a smart, cellular-connected meter, automatically-delivered testing materials, real-time coaching, and monitoring 24 hours a day, seven days a week, 365 days a year (24x7x365). When they track their blood glucose, they receive a highly personalized message about what to do that very moment, which we call a Health Nudge. Today, we have created a unified platform that provides smart, cellular-connected devices, supplies, informed coaching, data science-enabled insights and facilitates access to medications to help our members live better and healthier lives.

Our platform, which leverages data science and technology, creates a new kind of personalized experience for people with chronic conditions (our members). It is powered by a proprietary engine (we call it AI+AI), which Aggregates data from multiple sources, Interprets that data to separate signal from noise, Applies it at just the right time on the right surface to our members and Iterates to build improvements based on what we learn. This empowers our members to make sustainable behavior changes that lead to better outcomes and lower costs. The Livongo experience makes it easier for our members to stay healthy. We fit into the way our members live, put them in control of managing their condition, and give them an experience that they don’t just like, but love (evidenced by our average member Net Promoter Score, or NPS, of +64). An experience our members love, improved health results that are measurable and sustainable, and lower costs. That’s revolutionary in healthcare.

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While Livongo began with a focus on diabetes, our vision was always about the health of the whole person. We knew that the tools we were developing in our early days would be applicable across many chronic conditions, and that our members and clients wanted a seamless, easy-to-use experience, whether they had one or multiple chronic conditions. We recently introduced additional solutions: Livongo for Hypertension, Livongo for Prediabetes and Weight Management, and Livongo for Behavioral Health by myStrength. We create consumer-first experiences with high member satisfaction, measurable, sustainable health outcomes, and more cost-effective care for our members and our clients.

Our business is based on a recurring revenue model. This results in a highly predictable revenue stream, which helps us plan for growth and scale. Our clients are employers, health plans, government entities, and labor unions, which understand the importance of offering an effective platform for consistent management of chronic conditions. We have developed a go-to-market approach that allows us to roll out our platform to thousands of members in a short time and to launch multiple clients quickly. Our new client subscriptions typically have a term of one to three years, and we have aligned our incentives with those of our clients by only charging on a per participant per month basis. We have also aligned the incentives of each stakeholder in the member’s health journey by designing our solutions with a clear path for clinical and financial outcomes. As of March 31, 2019, we had 679 clients and over 164,000 Livongo for Diabetes members. In addition, we have a growing number of members enrolled in our hypertension, prediabetes and weight management, and behavioral health solutions.

We have experienced significant growth since our inception. Our revenue was $30.9 million and $68.4 million for the years ended December 31, 2017 and 2018, respectively, representing a year-over-year growth rate of 122%. Our revenue increased from $12.5 million for the three months ended March 31, 2018 to $32.1 million for the three months ended March 31, 2019, representing a year-over-year growth rate of 157%. We have incurred net losses of $16.9 million and $33.4 million for the years ended December 31, 2017 and 2018, respectively. Our net loss also increased from $4.2 million for the three months ended March 31, 2018 to $15.0 million for the three months ended March 31, 2019. As of March 31, 2019, we had an accumulated deficit of $128.6 million.

Chronic Conditions Are on the Rise

The prevalence of chronic conditions has reached immense proportions and is expected to continue rapidly growing. As of 2014, approximately 60% of all U.S. adults lived with one or more chronic conditions, and over 40% had two or more chronic conditions. It is prohibitively expensive in the current U.S. healthcare system to manage patients with chronic and behavioral health conditions, which in 2014 represented 90% of U.S. healthcare spend. In terms of public insurance, management of chronic conditions comprises an even larger proportion of spending: the National Association of Chronic Disease Directors estimates this cost at approximately $0.96 per dollar for Medicare and $0.83 per dollar for Medicaid. According to a 2018 Milken Institute study, chronic conditions collectively cost the U.S. economy approximately $1.1 trillion in direct healthcare costs, with an additional $2.6 trillion lost from reduced economic productivity in the same year.

There is a myth in healthcare that more is better—more devices, more applications, more medications, more physician visits, and more health data. Despite the vast increase in the amount of healthcare data and number of devices, applications, and medications that our system has delivered in recent decades, the epidemic of chronic conditions has only expanded. This is because most existing “solutions” are designed to provide people with generalized information and treatments rather than providing tailored insights to fundamentally empower them to live better and healthier lives.

People with Chronic Conditions Are Unhappy with the Current System

People living with chronic conditions are faced with a myriad of challenges. The current U.S. healthcare system is confusing, complex, and costly. It begins with their diagnoses, as they find themselves feeling overwhelmed. Managing their condition is not any easier, as they face a system not designed for chronic conditions. With care given primarily at hospitals or clinics, the existing healthcare service model does not
accommodate people who live with their condition 24x7x365. Rather than intermittent and expensive visits to their doctor or the hospital, these individuals can benefit from small, readily accessible interventions. Additionally, people living with a chronic condition want a way to streamline their interactions so that they can focus their time and energy on the rest of their lives, instead of on managing their care.

**Financial Stakeholders Are Unhappy with the Current System**

According to the Center for Disease Control, or CDC, close to $3.5 trillion was spent on U.S. healthcare in 2017, an increase of approximately $2 trillion from the year 2000. In 2014, approximately 90% of United States healthcare spend was attributable to people with chronic and behavioral health conditions. Diabetes alone is a massive problem, and in the United States, over 30 million people are living with diabetes. The cost of diabetes to the U.S. healthcare system, including direct costs to employers, exceeded $237 billion in 2017. These increasing costs have not translated to better outcomes for employers or payors. Additionally, sufficient financial incentives are not in place for physicians or health systems to spend the necessary time monitoring and managing patients with chronic conditions.

**We Focus on Personal Empowerment**

We are witnessing a transformational shift in consumers taking control of their own health as they have done in almost every other aspect of their lives. In industry after industry, new disruptors such as Amazon, Netflix, Airbnb, and Uber have used technology to transform the consumer experience. These disruptors deliver services that offer robust data and device platforms working together to deliver satisfying technology experiences—where the consumer is at the center and in control. These experiences are personalized, improve with feedback, and lead to vastly superior consumer experiences. People love the experiences that these companies create. They are empowering experiences, putting the consumer in charge, and enabling users to see and feel value.

We believe this means healthcare is finally ripe for a technology-driven, consumer-first transformation. We have been able to make a sophisticated technology easy to use for our member base, which averages 53 years of age, through a simple and intuitive user experience. While many organizations in healthcare are trying to “engage” patients, we are fundamentally different in that we “empower” our members with information, access, and tools that they find useful to stay healthy. Feedback powered by our AI+AI engine delivers tailored Health Nudges that make it easier for people to take actions that allow them to stay healthy. Health Nudges are small, readily accessible interventions, which can include hundreds of different behavior or lifestyle adjustments that can alter clinical outcomes for people with a chronic condition, such as diet advice, medication information, or suggestions for increases in physical activity. People simply want to live their lives, not be constantly reminded they are living with a condition. We believe our solution fits into the daily routine of our members and allows them to continue what they are already doing on a regular basis (such as checking their blood glucose, blood pressure or weight). By using our engine to “empower” people, which implies action, rather than “engage” people, which implies participation, we believe it becomes much easier to improve their health on their own terms, creating an environment for positive, sustainable behavior change.

**We Pioneered the Category of Applied Health Signals to Empower Our Members**

We are pioneering a new category in healthcare that sits at the intersection of data science, behavior enablement, and clinical impact with the technologies and capabilities to make the experience simpler and easier for people living with chronic conditions. With Applied Health Signals, we ensure that every time a member contributes information, they receive tailored, actionable guidance in return. For example, when a member with diabetes checks their blood glucose via our cellular-connected blood glucose meter, the member receives a Health Nudge that empowers that member to manage their condition right at the time of natural engagement.
This also creates a feedback loop in which we can improve each Health Nudge, based on real member data, for the benefit of our entire member base.

**Investment in Actionable Data Science Creates Sustainable Competitive Advantage: Our AI+AI Engine**

Our multidisciplinary team has built a flexible and robust technology engine capable of processing data from our devices as well as other data sources and turning that information into valuable Health Signals. At the heart of our platform is a core set of four capabilities which we call AI+AI: Aggregate, Interpret, Apply, and Iterate.

- **Aggregate**: We collect data from a variety of sources, including devices gathering information from our members in real time or near real time, third-party applications, medical claims, pharmacy claims, member preference surveys, and third-party partners.
- **Interpret**: We sift through this vast trove of health and consumer data and identify relevant Health Signals to develop actionable, personalized, and timely insights tailored to a specific person.
- **Apply**: We deliver specific Health Nudges directly to our members, based on each member's chronic condition and specific needs at exactly the right time in the right format and context.
- **Iterate**: We iterate and continuously tailor a member's experience based on his or her behavior, preferences, feedback, and results, in much the same way Netflix makes entertainment recommendations based on your preferences.

We believe our approach has created a unique experience for people with chronic conditions, delivering an experience people love, with measurable and sustainable clinical outcomes, and quantifiable cost savings. To do this, we have reimagined the member onboarding process, the physical devices, the digital feedback, the automatic delivery of supplies, and the coaching experience. Our team applies the concepts of AI+AI to best serve our clients and our members, both by using pre-enrollment information to optimize enrollment and create a seamless welcome and onboarding experience, as well as individually tailoring our data-driven feedback, monitoring, and coaching to each current member's preferences and needs.

**We Address the Whole Person**

We started with diabetes, one of the fastest-growing chronic conditions in the world, yet also one that is very manageable, provided that people have the right tools and continued motivation to manage it well. Diabetes is a chronic condition with the potential for very costly acute episodes requiring attention if not managed correctly day-to-day, and very costly longer-term debilitating effects, such as heart attacks and strokes, or kidney and eye disease. Given the significant amount of overlap across chronic conditions, we realized that in order to help people be as healthy and happy as possible and to achieve cost savings critically important to our clients, we need to address all of the chronic conditions a person is dealing with, such as high blood pressure (according to the CDC, in 2014, 70% of U.S. adults with diabetes also had high blood pressure). We believe that we have the ability to leverage our technology across multiple chronic conditions to truly focus on the whole person.

**Our Success Is Defined by Three Objectives**

We believe our success depends on achieving three objectives: our members have to love the experience, our products have to produce measurable and sustainable clinical outcomes, and we have to help our clients manage their costs. We deliver results that matter:

- **Satisfaction**: Our member satisfaction is high among healthcare companies, with an average member NPS of +64. Our members love the experience we create.
• **Clinical Outcomes:** We have built our solutions and invested in clinical studies to demonstrate measurable and sustained clinical outcomes across each of the chronic conditions we address. For example, Livongo for Hypertension demonstrated a 10 mmHg reduction in systolic blood pressure over a six-week period in individuals with a starting blood pressure greater than 140/80 mmHg.

• **Cost Management:** Unlike many healthcare solutions, we enable upfront savings and a strong return on investment across many clients. For example, with Livongo for Diabetes, we have been able to demonstrate average client savings of $88 per participant per month, or PPPM, in the first year of use based on a difference-in-difference cohort analysis, and among qualifying clients who make data available to us, we have been able to demonstrate an average client savings of $129 PPPM.

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**We Have Built an Efficient and Innovative Go-To-Market Model**

As of March 31, 2019, we had 679 clients and over 164,000 Livongo for Diabetes members. In addition, we have a growing number of members enrolled in our hypertension, prediabetes and weight management, and behavioral health solutions. We have a highly efficient go-to-market model with a focus on employers, payors, health plans, government entities, and labor unions. Our solutions appeal to a broad cross-section of sectors, and our current clients represent over 20% of the 2018 Fortune 500 Companies. Our representative clients that generated more than $100,000 in revenue in 2018 include AECOM Technology Corporation, American Foreign Service Protective Association, the Board of Pensions of Presbyterian Church (U.S.A.), Citigroup Inc., Compass Group USA, Cox Enterprises, Inc., Dean Foods Company, Delta Air Lines, Inc., Fortune Brands Home & Security, Inc., the Harris Health System, Hyatt Hotels Corporation, Thomas Jefferson University Hospitals Inc., Lowe’s Companies, Inc., Merck & Co., Inc., Microsoft Corporation, Michigan State University, PepsiCo, Inc., SAP SE, Target Corporation, UMass Memorial Health Care, US Foods Holding Corp, and WEA Insurance Corporation. Our clients also include five of the seven largest health plans and two leading pharmacy benefit managers. We sell to our clients through our direct sales force and with our channel partners.

**Our Market Opportunity**

We are focused on changing the way chronic conditions are treated. As of 2014, 147 million adults in the United States had a chronic condition and over 40% had two or more chronic conditions. Our initial solution is focused on, and the vast majority of our historical sales have come from, the management of diabetes, one of the fastest-growing chronic conditions in the world. Over 30 million Americans are living with diabetes. The American Diabetes Association estimated that costs associated with diabetes, including reduced productivity, were $327 billion in 2017 in the United States alone. We believe we have demonstrated that diabetes can be managed in a far more effective and cost-efficient way while empowering people to live better, healthier lives. Based on our estimates of the percentage of people receiving healthcare coverage from their employer, the prevalence of diabetes within this subgroup, and our average solution costs, we believe the immediately addressable market size for employees of self- and fully-insured employers with diabetes in the United States is approximately $12.3 billion. Over the longer term we see an additional $15.9 billion opportunity for adults with diabetes receiving healthcare coverage from Medicare or Medicaid. These estimates assume that the prevalence of diabetes between fully-insured and self-insured employer populations is the same.

Other chronic conditions also impose a significant financial cost on the healthcare system and broader economy. According to a 2018 Milken Institute study, chronic conditions collectively cost the U.S. economy $3.7 trillion. Approximately $2.6 trillion of this amount represents lost economic productivity in the same year. We offer a solution to address hypertension, or high blood pressure, which currently impacts approximately 76.6 million U.S. adults. Based on our estimates of the prevalence of hypertension among adults in the United States, the percentage of the population receiving healthcare coverage from employers, Medicare or Medicaid, and our average solutions costs, excluding people who also have diabetes, we believe this represents a $18.5 billion...
opportunity. As we continue expanding into other chronic conditions with our Livongo for Prediabetes and Weight Management, Livongo for Behavioral Health by myStrength, and other future products, we believe we will be able to serve millions of additional potential members. To provide consistent and comparable data across both chronic conditions and population groups, the estimates of our market opportunity for adults with diabetes or hypertension rely on prevalence rates and population estimates of 2015 due to limitations on the availability of more recent data for all measures. If any of these estimates have significantly changed, our calculations would be correspondingly affected either positively or negatively. Additionally, using the annualized PPPM for our solutions to determine the potential revenue we could realize if we fully penetrated these markets assumes that we will not change the pricing for our solutions. These estimates also assume that prevalence rates do not vary by geography and assume that the prevalence of diabetes between fully-insured and self-insured employer populations is the same.

The Livongo Solution

Our goal is to eliminate the confusion, complexity, and excessive costs prevalent today in the healthcare industry. Our team of data scientists aggregates health data and information to create actionable, personalized, and timely health recommendations, and we deliver them when people need it most. We empower our members and improve outcomes by leveraging technology-driven solutions, with a human touch.

We offer an integrated suite of solutions to promote sustainable health behavior change based on easy, real-time data capture supported by intuitive devices; insights driven by data science; and a human touch when the member needs it. Our suite of solutions shares a common product architecture and data structure, and is delivered through a common user interface, multi-channel applications for management, and a cross-condition integrated coaching model. Each solution can be used alone or in conjunction with others and enables members to share results with family, friends, or healthcare providers.

We currently offer the following solutions:

- **Livongo for Diabetes**: This solution offers our members a cellular-connected interactive blood glucose meter, unlimited blood glucose test strips, personalized Health Nudges to support behavior change, digital tools across mobile, web, and email, as well as coaching and monitoring.

- **Livongo for Hypertension**: Members receive a connected blood pressure monitor and cuff which is wireless and transmits data after each measurement to our mobile app. Members are able to review results, get Health Nudges for managing their blood pressure by reminding them to take their medication, follow a healthy eating pattern, be more physically active, and receive coaching and monitoring.

- **Livongo for Prediabetes and Weight Management**: Members who are at risk for developing diabetes or are overweight are offered a combination of a cellular-connected weight scale, a rich mobile experience that includes health education curricula and content, personalized coaching by registered dieticians and exercise physiologists, group classes, and online communities to encourage healthy eating and exercise habits.

- **Livongo for Behavioral Health by myStrength**: This solution uses a digital-first approach to delivering evidence-based interventions including cognitive behavioral therapy, acceptance and commitment therapy, positive psychology, mindfulness, and motivational interviewing to help resolve clinical conditions, build resiliency, manage stress, improve mood, sleep better, or simply find daily inspiration.
Our Competitive Advantage

Our competitive success is driven by our ability to provide superior solutions and a strong value proposition for all stakeholders in the member’s health journey. We compete successfully for the following reasons:

**We Provide Meaningful Value to Our Members**

We put members at the center of our design and have redefined the entire experience, reducing the confusion, complexity, and cost of having a chronic condition and ensuring members are never alone in their experience. Members love the experience we create, we make our members healthier, and we save our members money. Given the significant amount of overlap across chronic conditions, we realized that in order to help people be as healthy and happy as possible, and to achieve cost savings critically important to our clients, we need to address all of the chronic conditions a person is dealing with.

**We Provide Measurable Value to Our Clients**

Our clients want their employees and dependents to be healthy. They want programs that people will opt-in to, in significant numbers, that they will like and not complain to the benefits or support team about, and that are budget neutral or will save them money. We address each of their concerns by providing client and member satisfaction, high quality care for members, strong cost management, savings, and return on investment, or ROI, and a source of innovation and increased revenue.

**We Provide Meaningful Value to Healthcare Providers**

Physicians want to do good, and we make that easier. We integrate into their workflow and make it easier for them to do their job, by providing high quality data that enables them to focus on the issues that matter. Our platform synthesizes a wide range of data signals into an easily-interpretable physician’s report that is aligned with physicians’ existing workflows and can be integrated into their existing practice management and electronic health record systems. These insights help physicians make changes to medications and also close gaps in care. We improve outcomes, and reduce cost, and thereby drive increased financial value.

**We Have Purpose-Built Our Products to Support Our Attractive Business Model**

A large percentage of people with chronic conditions have them for life. Our model builds a long-term relationship with our members and our clients by delivering increasing value over time. We currently experience very low member and client churn, in part due to this model. We have also invested substantially in the strength and durability of our model, on an individual level, by being there 24x7x365 with experienced, informed, and empathic people who provide assistance as needed. This builds strong trust with our members, and also with our clients, where we invest in deeply integrated systems and consistent, relationship-based service, to sustain long-term bonds that go beyond the contracts we sign, as evidenced by our dollar-based net expansion rate of 113.8% as of December 31, 2018. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Factors Affecting our Performance—Product Intensity and Enrollment Impacts our Performance” for additional information. We deploy a direct sales team as well as channel partners to engage with new clients. Our sales team assists with initial subscriptions by new clients, and our member services team drives additional revenue within existing clients. We have several differentiated features that help us succeed:

- Products whose performance improves over time;
- Suite of services to address the whole person;
- Recurring revenue business model;
We Have Built a Secure and Scalable Technology Platform Driven By Our AI+AI Engine, Featuring:

- Cloud-based technology architecture built for growth;
- Highly secure platform;
- Robust integrations;
- Powerful platform built on continuous improvement; and
- Platform to manage whole person experience.

We Are Passionate About Improving the Experience in Healthcare

Our team has decades of collective experience across every facet of the healthcare and consumer industries. We operate in a heavily regulated industry where expertise in these sectors is critical to our success. More importantly, our passion is deeply personal, as many of our employees have a chronic condition. We build our solutions with empathy because we understand these issues personally.

How We Plan to Empower More Lives

- **Increase Member Enrollment within Existing Clients (Product Intensity).** At the end of twelve months, our average enrollment rate for Livongo for Diabetes clients who launched enrollment in 2018 is 34% of the total recruitable individuals at a client. The average enrollment rate after twelve months for fully-optimized clients who began enrollment in 2018 is over 47%. We have a significant opportunity at our existing clients to reach higher enrollment rates, particularly when we are able to optimize enrollment methods. For example, we recently entered into an agreement with one of our channel partners that allows us to access all available emails from our joint clients, which provides us another pathway for member outreach and increased enrollment. Once enrolled, our model builds a long-term relationship with our members by delivering increasing value over time.

- **Offer Additional Solutions that Expand Share of Wallet with Existing Clients (Product Density).** We believe we are underpenetrated within our existing client base. Our client base of 679 organizations as of March 31, 2019 represents a significant growth opportunity for us. We have a significant opportunity with those clients to offer our hypertension, prediabetes and weight management, and behavioral health solutions. For members who have more than one chronic condition that is covered by the Livongo suite of solutions, we can cross-sell in order to enhance the member experience, improve clinical results, and also increase our revenue per user.

- **Expand Client Base.** We believe that our market remains underpenetrated. We will continue to invest in our direct sales and marketing efforts and our channel partners to continue to acquire new clients, including employers, health plans, government entities, and labor unions.

- **Continue to Grow the Capabilities of Our Platform.** We constantly improve our platform and existing solutions. As we increase membership and generate new data from each of those members using our platform, our AI+AI engine continues to improve. This helps us deliver more effective solutions to our members, onboard new members more efficiently, grow our penetration at any given client, and improve the features of our solutions, as well as accelerate the development and delivery of new products to the market.
### Table of Contents

- **Continued Business Development.** We will continue to organically build new solutions and, where appropriate, execute on acquisitions and partnerships, to rapidly expand to other chronic conditions and help our members live better and healthier lives.

- **Expand Internationally.** Chronic condition management is a global issue and many of our large self-insured employer clients have populations abroad. Despite different healthcare systems, we believe our solutions are well suited for people living with chronic conditions around the globe, and we view this as a large longer-term opportunity.

### Risks Associated with Our Business

Our business is subject to numerous risks and uncertainties, including those highlighted in the section titled “Risk Factors.” These risks include, but are not limited to, the following:

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

- Our relatively limited operating history makes it difficult to evaluate our current business and future prospects and increases the risk of your investment.

- The failure of our solutions to achieve and maintain market acceptance could result in us achieving sales below our expectations, which would cause our business, financial condition and results of operation to be materially and adversely affected.

- The market for our solutions is new, rapidly evolving and increasingly competitive, as the healthcare industry in the United States is undergoing significant structural change, which makes it difficult to forecast demand for our solutions.

- If our market develops more slowly than we expect, if it encounters negative publicity, if our solutions do not drive member enrollment, or if we are not successful in demonstrating and promoting the benefits of our solutions, our business, financial condition, and results of operations could be adversely affected.

- Competitive solutions or other technological breakthroughs for the monitoring, treatment or prevention of chronic conditions or technological developments may adversely affect demand for our solutions.

- The growth of our business relies, in part, on the growth and success of our clients and channel partners and certain revenues from member enrollment, which are difficult to predict and are affected by factors outside of our control.

- If the number of individuals employed by our clients decreases or the number of members which subscribe to our solutions decreases, our revenue will likely decrease.

- Upon completion of this offering, our executive officers, directors and holders of 5% or more of our common stock will collectively beneficially own approximately % of the outstanding shares of our common stock and continue to have substantial control over us, which will limit your ability to influence the outcome of important transactions, including a change in control.

### Channels for Disclosure of Information

Following the completion of this offering, we intend to announce material information to the public through filings with the Securities and Exchange Commission, or the SEC, our website (www.livongo.com), press releases, public conference calls, and public webcasts. We use these channels, as well as social media, to communicate with our members, clients, and the public about our company, our services and other issues. It is possible that the information we post on social media could be deemed to be material information. As such, we encourage investors, the media, and others to follow the channels listed above and to review the information disclosed through such channels.
Any updates to the list of disclosure channels through which we will announce information will be posted on the investor relations page on our website.

**Corporate Information**

We were incorporated in October 2008 as EosHealth, Inc., a Delaware corporation, and changed our name to Livongo Health, Inc. in September 2014. Our principal executive offices are located at 150 West Evelyn Avenue, Mountain View, California 94041, and our telephone number is (866) 435-5643. Our website address is www.livongo.com. Information contained on, or that can be accessed through, our website does not constitute part of this prospectus and inclusions of our website address in this prospectus are inactive textual references only.

Livongo Health, Livongo and our other registered or common law trademarks, service marks, or trade names appearing in this prospectus are the property of Livongo Health, Inc. Other trademarks and trade names referred to in this prospectus are the property of their respective owners.

**Implications of Being an Emerging Growth Company**

We are an “emerging growth company” as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. An emerging growth company may take advantage of specified reduced reporting requirements that are otherwise applicable generally to public companies. These reduced reporting requirements include:

- the requirement to present only two years of audited financial statements in this prospectus and only two years of related “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our periodic reports and registration statements, including this prospectus;
- an exemption from compliance with the auditor attestation requirement on the effectiveness of our internal controls over financial reporting;
- reduced disclosure about our executive compensation arrangements; and
- an exemption from the requirements to obtain a non-binding advisory vote on executive compensation or stockholder approval of any golden parachute arrangements.

We will remain an emerging growth company until the earliest to occur of: (i) the first fiscal year following the fifth anniversary of our initial public offering; (ii) the first fiscal year after our annual gross revenue is $1.07 billion or more; (iii) the date on which we have, during the previous three-year period, issued more than $1.0 billion in non-convertible debt securities; or (iv) as of the end of any fiscal year in which the market value of our common stock held by non-affiliates exceeded $700.0 million as of the end of the second quarter of that fiscal year.

Pursuant to Section 107 of the JOBS Act, as an emerging growth company, we have elected to take advantage of the extended transition period for complying with new or revised accounting standards until those standards would otherwise apply to private companies and to adopt certain of the reduced disclosure requirements available to emerging growth companies. As a result of the accounting standards election, we will not be subject to the same implementation timing for new or revised accounting standards as other public companies that are not emerging growth companies, which may make comparison of our operating results and financial statements to those of other public companies more difficult. It is possible that some investors will find our common stock less attractive as a result, which may result in a less active trading market for our common stock and higher volatility in our stock price. Additionally, because we have taken advantage of certain reduced reporting requirements, the information contained herein may be different than the information you receive from other public companies in which you hold stock.

See the section titled “Risk Factors—Risks Related to Our Business—We are an “emerging growth company,” and our election to comply with the reduced disclosure requirements as a public company may make our common stock less attractive to investors.”
### THE OFFERING

<table>
<thead>
<tr>
<th>Description</th>
<th>Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common stock offered by us</td>
<td>shares</td>
</tr>
<tr>
<td>Underwriters’ over-allotment option</td>
<td>shares</td>
</tr>
<tr>
<td>Common stock to be outstanding immediately after this offering</td>
<td>shares (shares, if the underwriters exercise their over-allotment option in full)</td>
</tr>
</tbody>
</table>

#### Use of proceeds

We estimate that the net proceeds to us from the sale of shares of our common stock in this offering will be approximately $\text{million}$ (or approximately $\text{million}$ if the underwriters exercise their over-allotment option in full), based upon the assumed initial public offering price of $\text{per share}$, which is the midpoint of the estimated offering price range set forth on the cover page on this prospectus, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

We intend to use the net proceeds from this offering for general corporate purposes, including working capital, operating expenses, and capital expenditures. We may use a portion of the net proceeds we receive from this offering to acquire businesses, products, services, or technologies. However, we do not have agreements or commitments for any material acquisitions at this time. See the section titled “Use of Proceeds” for additional information.

#### Concentration of ownership

Upon the completion of this offering, our executive officers, directors, current 5% or greater stockholders and affiliated entities will together beneficially own approximately % of our common stock outstanding after this offering (or % if the underwriters exercise their over-allotment option in full).

#### Risk factors

See the section titled “Risk Factors” and other information included in this prospectus for a discussion of factors you should carefully consider before deciding to invest in our common stock.

#### Proposed Nasdaq trading symbol

“LVGO”

The number of shares of our common stock that will be outstanding immediately after this offering is based on 78,233,411 shares of our common stock (including shares of our redeemable convertible preferred stock on an as-converted basis) outstanding as of March 31, 2019, and excludes:

- 16,739,586 shares of our common stock issuable upon the exercise of options to purchase shares of our common stock that were outstanding as of March 31, 2019 under our 2008 Stock Incentive Plan, or our 2008 Plan, and our 2014 Stock Incentive Plan, or our 2014 Plan, with a weighted-average exercise price of $1.80 per share;
• 3,690,243 shares of our common stock subject to restricted stock units, or RSUs, outstanding as of March 31, 2019 under our 2014 Plan;
• 785,000 shares of our common stock issuable upon the exercise of warrants outstanding as of March 31, 2019 to purchase shares of our common stock, with a weighted-average exercise price of $2.09 per share;
• 1,340,200 shares of our common stock issuable upon the vesting of RSUs granted after March 31, 2019; and
• shares of our common stock reserved for future issuance under our equity compensation plans, consisting of:
  • shares of our common stock to be reserved for future issuance under our 2019 Equity Incentive Plan, or our 2019 Plan, which will become effective on the business day immediately prior to the effective date of the registration statement of which this prospectus forms a part,
  • shares of our common stock reserved for future issuance under our 2014 Plan, which number of shares will be added to the shares of our common stock to be reserved for future issuance under our 2019 Plan upon its effectiveness, and
  • shares of our common stock to be reserved for future issuance under our 2019 Employee Stock Purchase Plan, or our ESPP, which will become effective on the business day immediately prior to the effective date of the registration statement of which this prospectus forms a part.

Our 2019 Plan and ESPP each provide for annual automatic increases in the number of shares of our common stock reserved thereunder, and our 2019 Plan also provides for increases to the number of shares of our common stock that may be granted thereunder based on shares under our 2008 Plan and 2014 Plan that expire, are forfeited, or otherwise repurchased by us, as more fully described in the section titled “Executive Compensation—Employee Benefits and Stock Plans.”

Except as otherwise indicated, all information in this prospectus assumes or gives effect to:
• the filing and effectiveness of our amended and restated certificate of incorporation in Delaware and the effectiveness of our amended and restated bylaws, each of which will occur immediately prior to the completion of this offering;
• the automatic conversion of 58,615,488 shares of our redeemable convertible preferred stock outstanding as of March 31, 2019 into an equivalent number of shares of our common stock immediately prior to the completion of this offering;
• no exercise of outstanding stock options or warrants or the settlement of outstanding RSUs;
• no exercise by the underwriters of their over-allotment option; and
• a 1-for-2 reverse split of our capital stock effected on June 27, 2019.
The following summary consolidated financial and other data should be read in conjunction with "Management’s Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and the related notes thereto included elsewhere in this prospectus. The consolidated statements of operations data for each of the years ended December 31, 2017 and 2018 and the consolidated balance sheet data as of December 31, 2018 (except for the pro forma information) are derived from our audited consolidated financial statements that are included elsewhere in this prospectus. The consolidated statements of operations data for the three months ended March 31, 2018 and 2019 and the consolidated balance sheet data as of March 31, 2019 are derived from our unaudited consolidated financial statements that are included elsewhere in this prospectus. The unaudited selected consolidated financial data set forth below have been prepared on the same basis as our audited consolidated financial statements and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments, that are necessary for the fair statement of such data. Our historical results are not necessarily indicative of the results that may be expected in the future, and the results for any quarter are not necessarily indicative of results to be expected for a full year or any other period. The summary consolidated financial and other data in this section are not intended to replace the consolidated financial statements and the related notes thereto included elsewhere in this prospectus and are qualified in their entirety by the consolidated financial statements and the related notes thereto included elsewhere in this prospectus.

<table>
<thead>
<tr>
<th>Consolidated Statements of Operations Data:</th>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td></td>
<td>(in thousands, except per share data)</td>
<td>2018</td>
</tr>
<tr>
<td>Revenue</td>
<td>$ 30,850</td>
<td>$ 68,431</td>
</tr>
<tr>
<td>Cost of revenue(1)(2)</td>
<td>8,312</td>
<td>20,269</td>
</tr>
<tr>
<td>Gross profit</td>
<td>22,538</td>
<td>48,162</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development(1)</td>
<td>12,028</td>
<td>24,861</td>
</tr>
<tr>
<td>Sales and marketing(1)(2)</td>
<td>16,502</td>
<td>36,433</td>
</tr>
<tr>
<td>General and administrative(1)(3)</td>
<td>11,050</td>
<td>23,063</td>
</tr>
<tr>
<td>Change in fair value of contingent consideration</td>
<td>—</td>
<td>(1,200)</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>39,580</td>
<td>83,157</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(17,042)</td>
<td>(34,995)</td>
</tr>
<tr>
<td>Other income, net</td>
<td>123</td>
<td>1,641</td>
</tr>
<tr>
<td>Loss before provision for income taxes</td>
<td>(16,919)</td>
<td>(33,354)</td>
</tr>
<tr>
<td>Provision for (benefit from) income taxes</td>
<td>(61)</td>
<td>28</td>
</tr>
<tr>
<td>Net loss</td>
<td>(16,858)</td>
<td>(33,382)</td>
</tr>
<tr>
<td>Accretion of redeemable convertible preferred stock</td>
<td>(143)</td>
<td>(162)</td>
</tr>
<tr>
<td>Net loss attributable to common stockholders</td>
<td>(17,001)</td>
<td>(33,544)</td>
</tr>
<tr>
<td>Net loss per share attributable to common stockholders, basic and diluted(4)</td>
<td>$ (1.18)</td>
<td>$ (2.02)</td>
</tr>
<tr>
<td>Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted(4)</td>
<td>14,442</td>
<td>16,573</td>
</tr>
<tr>
<td>Pro forma net loss per share attributable to common stockholders, basic and diluted(4)</td>
<td>$ (0.47)</td>
<td>$ (0.19)</td>
</tr>
<tr>
<td>Weighted-average shares used in computing pro forma net loss per share attributable to common stockholders, basic and diluted(4)</td>
<td>71,757</td>
<td>76,878</td>
</tr>
</tbody>
</table>
(1) Includes stock-based compensation expense as follows:

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
</tr>
<tr>
<td><strong>Cost of revenue</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
</tr>
<tr>
<td>Research and development</td>
<td>541</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>413</td>
</tr>
<tr>
<td><strong>General and administrative</strong></td>
<td>1,164</td>
</tr>
<tr>
<td><strong>Total stock-based compensation expense</strong></td>
<td>$2,118</td>
</tr>
</tbody>
</table>

(2) Includes amortization of intangible assets as follows:

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
</tr>
<tr>
<td><strong>Cost of revenue</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total amortization of intangible assets</strong></td>
<td>$12</td>
</tr>
</tbody>
</table>

(3) Includes acquisition-related expenses as follows:

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
</tr>
<tr>
<td><strong>General and administrative</strong></td>
<td>$452</td>
</tr>
<tr>
<td><strong>Total acquisition-related expenses</strong></td>
<td>$452</td>
</tr>
</tbody>
</table>

(4) See Notes 2 and 12 to our consolidated financial statements elsewhere in this prospectus for an explanation of the method used to calculate our basic and diluted net loss per share attributable to common stockholders, our basic and diluted pro forma net loss per share, and the weighted-average number of shares used in the computation of the per share amounts.

### March 31, 2019

<table>
<thead>
<tr>
<th></th>
<th>Actual</th>
<th>Pro Forma(1)</th>
<th>Pro Forma As Adjusted(2)(3)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Consolidated Balance Sheet Data:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 54,996</td>
<td>$ 54,996</td>
<td></td>
</tr>
<tr>
<td>Working capital</td>
<td>74,085</td>
<td>74,085</td>
<td></td>
</tr>
<tr>
<td>Total assets</td>
<td>181,837</td>
<td>181,837</td>
<td></td>
</tr>
<tr>
<td>Deferred revenue, current and noncurrent</td>
<td>3,526</td>
<td>3,526</td>
<td></td>
</tr>
<tr>
<td>Redeemable convertible preferred stock</td>
<td>236,970</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(128,573)</td>
<td>(131,950)</td>
<td></td>
</tr>
<tr>
<td>Total stockholders’ (deficit) equity</td>
<td>(100,967)</td>
<td>136,003</td>
<td></td>
</tr>
</tbody>
</table>

(1) The pro forma column in the balance sheets data table above reflects: (i) the automatic conversion of 58,615,488 shares of our redeemable convertible preferred stock outstanding as of March 31, 2019 into an equivalent number of shares of our common stock as if such conversion had occurred on March 31, 2019, which will occur immediately prior to the completion of this offering, (ii) stock-based compensation expense of $3.4 million related to RSUs subject to service-based and performance-based vesting conditions, which we will recognize upon the completion of this offering, as further described in Note 2 to our consolidated financial statements included elsewhere in this prospectus, and (iii) the filing and effectiveness of our amended and restated certificate of incorporation in Delaware, which will be in effect immediately prior to the completion of this offering.
The pro forma as adjusted column in the balance sheet data table above gives effect to (i) the pro forma adjustments set forth above, and (ii) the sale and issuance by us of shares of our common stock in this offering, based upon the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

Each $1.00 increase or decrease in the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase or decrease, as applicable, our cash and cash equivalents, additional paid-in capital, total stockholders’ equity, and total capitalization by $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the underwriting discounts and commissions payable to us. Similarly, each increase or decrease of 1.0 million shares in the number of shares of our common stock offered by us would increase or decrease, as applicable, each of our pro forma as adjusted cash and cash equivalents, additional paid-in capital, total stockholders’ equity, and total capitalization by $ , assuming the assumed initial public offering price per share remains the same, and after deducting the underwriting discounts and commissions payable by us.

### Key Metrics

To analyze our business performance, determine financial forecasts, and help develop long-term strategic plans, we review the following key metrics:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>(dollars in thousands)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clients</td>
<td>218</td>
<td>413</td>
</tr>
<tr>
<td>Enrolled diabetes members</td>
<td>53,858</td>
<td>113,854</td>
</tr>
<tr>
<td>Total contract value</td>
<td>$ 77,158</td>
<td>$ 154,468</td>
</tr>
</tbody>
</table>

**Clients.** We define our clients as business entities that have at least one active paid contract with us at the end of a particular period. Entities that access our platform through our channel partners, PBMs, and resellers are counted as individual clients. We do not count our channel partners, PBMs, or resellers as clients, unless they also separately have active paid contracts for our solutions. If business units or subsidiaries of the same entity enter into separate agreements with us, they are counted as separate clients. However, entities that have purchased multiple solutions through different contracts are treated as a single client.

**Enrolled Diabetes Members.** We define our enrolled diabetes members as all individuals that are enrolled in Livongo for Diabetes at the end of a given period. This number excludes: (i) employees or dependents of a client that has ceased using our solution, (ii) employees who no longer have an employment relationship with an active client, and their dependents, and (iii) employees and dependents who have not been active on or used our solution for a period of time as specified in the applicable client’s agreement, which is typically between four and six months.

**Total Contract Value.** We define total contract value as contractually committed orders to be invoiced under agreements initially entered into during the relevant period. Agreements are only counted in total contract value in the period in which they are entered into, and for purposes of this calculation, we assume an average member enrollment rate. While some of our agreements include clauses providing for termination at the convenience of the client, when evaluating total contract value, we assume an agreement will be serviced for the full term. Until such time as these amounts are invoiced, which occurs at the end of each month of service, they are not recorded in revenue, deferred revenue, or elsewhere in our consolidated financial statements. Total contract value only includes agreements entered into with new clients or renewals entered into with existing clients; it does not include increases to enrolled members during the original term of the contract.

See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Overview—Key Metrics,” for additional information.
Non-GAAP Financial Measures

We believe that, in addition to our financial results determined in accordance with generally accepted accounting principles, or GAAP, adjusted gross profit, adjusted gross margin, and adjusted EBITDA, all of which are non-GAAP financial measures, are useful in evaluating our business, results of operations, and financial condition.

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017 (dollars in thousands)</td>
<td>2018 (dollars in thousands)</td>
</tr>
<tr>
<td>Adjusted gross profit</td>
<td>$ 22,550</td>
<td>$ 48,500</td>
</tr>
<tr>
<td>Adjusted gross margin (as percentage of revenue)</td>
<td>73.1%</td>
<td>70.9%</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$ (14,096)</td>
<td>$ (27,654)</td>
</tr>
</tbody>
</table>

Adjusted Gross Profit and Adjusted Gross Margin

We define adjusted gross profit as GAAP gross profit, excluding stock-based compensation expense and amortization of intangible assets. We define adjusted gross margin as our adjusted gross profit divided by our revenue.

Adjusted EBITDA

We calculate adjusted EBITDA as net loss adjusted to exclude (i) depreciation and amortization, (ii) amortization of intangible assets, (iii) stock-based compensation expense, (iv) acquisition-related expenses, (v) other income, net, (vi) change in fair value of contingent consideration, and (vii) provision for (benefit from) income taxes.

Adjusted gross profit, adjusted gross margin, and adjusted EBITDA are presented for supplemental information purposes only and should not be considered a substitute for financial information in accordance with GAAP. We have included these non-GAAP financial measures because they are key measures used by our management to evaluate our operating performance. Accordingly, we believe that these non-GAAP financial measures provide useful information to investors and others in understanding and evaluating our operating result in the same manner as our management team and board of directors. Our calculation of these non-GAAP financial measures may differ from similarly-titled non-GAAP measures, if any, reported by our peer companies. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Non-GAAP Financial Measures” for explanations of how we calculated these measures and for reconciliations to the most directly comparable GAAP financial measures.
RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with all of the other information contained in this prospectus, including our consolidated financial statements and the related notes thereto, before making a decision to invest in our common stock. 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. If any of the following risks occur, our business, financial condition, operating results, and prospects could be materially and adversely affected. In that event, the price of our common stock could decline, and you could lose part or all of your investment.

Risks Related to Our Business

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

We have incurred net losses on an annual basis since our inception. We incurred net losses of $16.9 million, $33.4 million, $4.2 million, and $15.0 million for the years ended December 31, 2017 and 2018 and three months ended March 31, 2018 and 2019, respectively. We had an accumulated deficit of $128.6 million as of March 31, 2019. We expect our costs will increase substantially in the foreseeable future and our losses will continue as we expect to invest significant additional funds towards growing our business and operating as a public company and as we continue to invest in increasing our client base, expanding our marketing channels and operations, hiring additional employees, and developing new solutions. 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. To date, we have financed our operations principally from the sale of our equity, revenue from sales of our solutions, and the incurrence of indebtedness. Our cash flow from operations was negative for the years ended December 31, 2017 and 2018 and three months ended March 31, 2018 and 2019. We may not generate positive cash flow from operations or profitability in any given period, and our limited operating history may make it difficult for you to evaluate our current business and our future prospects.

We have encountered and will continue to encounter risks and difficulties frequently experienced by growing companies in rapidly changing industries, including increasing expenses as we continue to grow our business. We expect our operating expenses to increase significantly over the next several years as we continue to hire additional personnel, expand our operations and infrastructure, and continue to develop and expand our solutions. In addition to the expected costs to grow our business, we also expect to incur additional legal, accounting, and other expenses as a newly public company. These investments may be more costly than we currently anticipate, and we may not succeed in increasing our revenue sufficiently to offset these higher expenses. To date, we have financed our operations principally from the sale of our equity, revenue from sales of our solutions, and the incurrence of indebtedness. Our cash flow from operations was negative for the years ended December 31, 2017 and 2018 and three months ended March 31, 2018 and 2019. We may not generate positive cash flow from operations or profitability in any given period, and our limited operating history may make it difficult for you to evaluate our current business and our future prospects.

Our relatively limited operating history makes it difficult to evaluate our current business and future prospects and increases the risk of your investment.

Our relatively limited operating history makes it difficult to evaluate our current business and prospects and plan for our future growth. We began offering Livongo for Diabetes in 2014, with all of our growth occurring in recent years. We have encountered and will continue to encounter significant risks and uncertainties frequently experienced by new and growing companies in rapidly changing industries, such as determining appropriate investments of our limited resources, market adoption of our existing and future solutions, competition from other companies, acquiring and retaining clients, managing client deployments, overseeing member enrollment,
hiring, integrating, training and retaining skilled personnel, developing new solutions, determining prices for our solutions, unforeseen expenses, and challenges in forecasting accuracy. Livongo for Diabetes historically has accounted for a substantial portion of our revenue, and we expect that to continue for the next several years. Although we recently began offering Livongo for Hypertension, Livongo for Prediabetes and Weight Management, and Livongo for Behavioral Health by myStrength, these solutions are new and our sales team does not have extensive experience marketing these solutions. Our sales efforts with respect to these solutions may not be as successful as our sales of Livongo for Diabetes. Any new products may not be accepted by our channel partners, resellers, payors, clients, or members. If we have difficulty launching new solutions, our reputation may be harmed and our financial results may be adversely affected. In order to substantially increase our revenue, we will need to target chronic conditions other than diabetes. The features, designs, and capabilities that distinguish our Livongo for Diabetes solution, as well as the relationships we have built with our current channel partners and resellers, may not be useful in helping solutions for other chronic conditions succeed in the marketplace. Even if we are able to successfully develop new solutions for chronic conditions other than diabetes, the market opportunity and market growth of solutions for other chronic conditions may not be as attractive as that of Livongo for Diabetes. If we are unable to increase enrollment in Livongo for Diabetes, or successfully develop and commercialize new solutions for chronic conditions other than diabetes, our revenue and our ability to achieve and sustain profitability would be impaired. Additional risks include our ability to effectively manage growth and process, store, protect and use personal data in compliance with governmental regulation, contractual obligations and other legal obligations related to privacy and security. If our assumptions regarding these and other similar risks and uncertainties, which we use to plan our business, are incorrect or change as we gain more experience operating our business or due to changes in our industry, or if we do not address these challenges successfully, our operating and financial results could differ materially from our expectations and our business could suffer.

We expect to continue to increase headcount and to hire more specialized personnel in the future as we grow our business. We will need to continue to hire, train and manage additional qualified software engineers, coaching and monitoring personnel, and sales and marketing staff, and improve and maintain our technology to properly manage our growth. If our new hires perform poorly, if we are unsuccessful in hiring, training, managing and integrating these new employees, or if we are not successful in retaining our existing employees, our business may be adversely affected.

The failure of our solutions to achieve and maintain market acceptance could result in us achieving sales below our expectations, which would cause our business, financial condition and results of operation to be materially and adversely affected.

Our current business strategy is highly dependent on our solutions achieving and maintaining market acceptance. Market acceptance and adoption of our solutions depends on educating people with chronic conditions, as well as self-insured employers, payors, health plans and government entities, as to the distinct features, ease-of-use, positive lifestyle impact, cost savings, and other perceived benefits of our solutions as compared to competitive solutions. If we are not successful in demonstrating to existing and potential clients the benefits of our solutions, or if we are not able to achieve the support of employers, healthcare providers and insurance carriers for our solutions, our sales may decline or we may fail to increase our sales in line with our forecasts.

Achieving and maintaining market acceptance of our solutions could be negatively impacted by many factors, including:

• the failure of Applied Health Signals to achieve wide acceptance among people with chronic conditions, self-insured employers, payors, health plans, government entities, and key opinion leaders in the treatment community;

• lack of evidence or peer-reviewed publication of clinical evidence supporting the safety, ease-of-use, cost-savings or other perceived benefits of our solutions over competitive products or other currently available methodologies;
perceived risks associated with the use of our solutions or similar products or technologies generally;

the introduction of competitive solutions and the rate of acceptance of those solutions as compared to our solution; and

results of clinical and financial studies relating to chronic condition solutions or similar competitive solutions.

In addition, our solutions may be perceived by our channel partners, resellers, payors, clients, or members to be more complicated or less effective than traditional approaches, and people may be unwilling to change their current health regimens. Moreover, we believe that healthcare providers tend to be slow to change their medical treatment practices because of perceived liability risks arising from the use of new products and the uncertainty of third-party reimbursement. Accordingly, healthcare providers may not recommend our solution until there is sufficient evidence to convince them to alter their current approach.

The market for our solutions is new, rapidly evolving, and increasingly competitive, as the healthcare industry in the United States is undergoing significant structural change, which makes it difficult to forecast demand for our solutions.

The market for our solutions is new and rapidly evolving, and it is uncertain whether it will achieve and sustain high levels of demand and market adoption. Our future financial performance will depend in part on growth in this market and on our ability to adapt to emerging demands of our clients. It is difficult to predict the future growth rate and size of our target market. Negative publicity concerning our platform, our solutions, Applied Health Signals, or our market as a whole could limit market acceptance of our solutions. If our clients and members do not perceive the benefits of our solutions, or if our solutions do not drive member enrollment, then our market may not develop at all, or it may develop more slowly than we expect. Our success will depend to a substantial extent on the willingness of healthcare organizations to increase their use of our technology and our ability to demonstrate the value of our technology to our existing clients and potential clients. If healthcare organizations do not recognize or acknowledge the benefits of our solutions or if we are unable to reduce healthcare costs or drive positive health outcomes, then the market for our solutions might not develop at all, or it might develop more slowly than we expect. Similarly, negative publicity regarding patient confidentiality and privacy in the context of technology-enabled healthcare or concerns experienced by our competitors could limit market acceptance of our solutions.

The healthcare industry in the United States is undergoing significant structural change and is rapidly evolving. We believe demand for our solutions has been driven in large part by rapidly growing costs in the traditional healthcare system, the movement toward patient-centricity and personalized healthcare, and advances in technology. Widespread acceptance of personalized healthcare is critical to our future growth and success. A reduction in the growth of personalized healthcare could reduce the demand for our solutions and result in a lower revenue growth rate or decreased revenue. Additionally, our solutions are offered on a subscription basis, and the adoption of subscription business models is still relatively new, especially in the healthcare industry. If companies do not shift to subscription business models and subscription health management tools do not achieve widespread adoption, or if there is a reduction in demand for subscription products and services or subscription health management tools, our business, financial condition, and results of operations could be adversely affected.

We currently derive a high concentration of our revenue from sales to clients that are self-insured employers. The demand for our solution depends on the need of self-insured employers to manage the costs of healthcare services that they pay on behalf of their employees. While the percentage of employers who are self-insured has been increasing over the past decade, this trend may not continue. Various factors, including changes in the healthcare insurance market or in government regulation of the healthcare industry, could cause the percentage of self-insured employers to decline, which would adversely affect the market for our solution and would negatively affect our business. Furthermore, our failure to increase sales to employers with fully-insured plans could have a material adverse effect on our business, financial condition, and results of operations.
Additionally, if healthcare benefits trends shift or entirely new technologies are developed that replace existing offerings, our existing or future solutions could be rendered obsolete and our business could be adversely affected. In addition, we may experience difficulties with software development, industry standards, design or marketing that could delay or prevent our development, introduction or implementation of new solutions and enhancements.

If our market develops more slowly than we expect, if it encounters negative publicity, if our solutions do not drive member enrollment, or if we are not successful in demonstrating and promoting the benefits of our solutions, our business, financial condition, and results of operations could be adversely affected.

While our market is in an early stage of development, it is evolving rapidly and becoming increasingly competitive, and we expect it to attract increased competition. We currently face competition from a range of companies, including Virta Health Corp., Omada Health, Inc., Glooko, Inc., Hello Heart Inc., Lyra Health, Inc., Onduo LLC, and Gingerio, Inc. Our competitors include both enterprise companies who are focused on or may enter the healthcare industry, including initiatives and partnerships launched by these large companies, and from private companies that offer point solutions for a single chronic condition. These companies, which may offer their solutions at lower prices, are continuing to develop additional products and becoming more sophisticated and effective. In addition, large, well-financed healthcare providers and insurance carriers have in some cases developed their own platform or tools and may provide these solutions to their clients at discounted prices. Competition from specialized software providers or device manufacturers, which may facilitate the collection of data but offer limited interpretation, feedback or guidance, and other parties will result in continued pricing pressures, which are likely to lead to price declines in certain product segments, which could negatively impact our sales, profitability and market share. Our ability to compete effectively depends on our ability to distinguish our company and our solution from our competitors and their products, and includes factors such as:

- long-term outcomes;
- ease of use and convenience;
- price;
- greater name and brand recognition;
- longer operating histories;
- greater market penetration;
- larger and more established client and channel partner relationships;
- larger sales forces and more established products and networks;
- larger marketing budgets;
- access to significantly greater financial, human, technical and other resources;
- breadth, depth, and efficacy of offerings;
- quality and reliability of solutions; and
- employer, healthcare provider, government agency and insurance carrier acceptance.

Some of our competitors may have greater name and brand recognition, longer operating histories, significantly greater resources than we do and may be able to offer solutions similar to ours at a more attractive price than we can. Further, our current or potential competitors may be acquired by third parties with greater available resources. As a result, our competitors may be able to respond more quickly and effectively than we can to new or changing opportunities, technologies, standards or client requirements and may have the ability to initiate or withstand substantial price competition. In addition, our competitors have established, and may in the future establish, cooperative relationships with vendors of complementary products, technologies or services to increase the availability of their solutions in the marketplace.
New competitors or alliances may emerge that have greater market share, a larger client base, more widely adopted proprietary technologies, greater marketing expertise, greater financial resources and larger sales forces than we have, which could put us at a competitive disadvantage. Our competitors could also be better positioned to serve certain segments of our market, which could create additional price pressure. In light of these factors, even if our solution is more effective than those of our competitors, current or potential clients may accept competitive solutions in lieu of purchasing our solution. If we are unable to successfully compete, our business, financial condition, and results of operations could be adversely affected.

**Competitive solutions or other technological breakthroughs for the monitoring, treatment or prevention of chronic conditions or technological developments may adversely affect demand for our solutions.**

Our ability to achieve our strategic objectives will depend, among other things, on our ability to develop and commercialize solutions for the monitoring of chronic conditions that offer distinct features, are easy-to-use, provide measurable and meaningful cost savings to payors, and are more appealing than available alternatives. Our competitors, as well as a number of other companies, within and outside the healthcare industry, are pursuing new delivery devices, delivery technologies, sensing technologies, procedures, drugs, and other therapies for the monitoring and treatment of chronic conditions. Any technological breakthroughs in monitoring, treatment or prevention could reduce the potential market for our solutions, which would significantly reduce our sales.

The frequent introduction by competitors of solutions that are or claim to be superior to our solutions may create market confusion, which may make it difficult for potential clients to differentiate the benefits of our solutions over competitive products. In addition, the entry of multiple new products may lead some of our competitors to employ pricing strategies that could adversely affect the pricing of our solution. If a competitor develops a product that competes with or is perceived to be superior to our solutions, or if a competitor employs strategies that place downward pressure on pricing within our industry, our sales may decline significantly or may not increase in line with our forecasts, either of which would adversely affect our business, financial condition and results of operations.

**The growth of our business relies, in part, on the growth and success of our clients and channel partners and certain revenues from member enrollment, which are difficult to predict and are affected by factors outside of our control.**

We enter into agreements with our clients under which our fees are generally dependent upon the number of members that are enrolled in our clients' subscription to our solutions each month. In addition, some fees are subject to credits if certain performance criteria are not met, which in some cases depend on the behavior of our members, such as their continued engagement with our solution, and other factors outside of our control. In addition, if the number of members covered by one or more of our client's health plan programs were to be reduced, such decrease would lead to a decrease in our revenue. In addition, the growth forecasts of our clients are subject to significant uncertainty and are based on assumptions and estimates that may prove to be inaccurate and their membership enrollment in our solutions could fail to grow at anticipated rates, if at all.

Additionally, we enter into non-exclusive agreements with our channel partners under which a portion of our channel partner commissions and administrative fees are variable based on their client sales, which are affected by factors outside of our control. If the number of clients represented by one or more of our channel partners were to be reduced by a material amount or if our channel partners were to refer their clients to our competitors, such decreases may lead to a decrease in our total number of clients, member enrollment rate and in our revenue, which could harm our business, financial condition and results of operations. In addition, growth forecasts of our channel partners are subject to significant uncertainty and are based on assumptions and estimates that may prove to be inaccurate.
If the number of individuals employed by our clients decreases or the number of members which subscribe to our solutions decreases, our revenue will likely decrease.

Under most of our client contracts, we base our fees on the number of individuals enrolled in the solutions subscribed to by our clients. Many factors may lead to a decrease in the number of individuals covered by our clients and the number of solutions subscribed to by our clients, including, but not limited to, the following:

- natural attrition of employees of our clients;
- continued acceptance of our solutions by employees for existing and new chronic conditions;
- the timing of development and release of new solutions;
- features and functionality that are lower cost alternatives introduced by us or our competitors;
- technological changes and developments within the markets we serve; and
- changes in the prevalence of type of chronic conditions.

If the number of individuals covered by our employers, health plans and other clients decreases, or the number of solutions to which they subscribe decreases, for any reason, our enrollment rate may decline and our revenue will likely decrease.

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

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

- our ability to attract new channel partners, resellers and clients and enroll new members, and retain existing clients and members;
- the enrollment cycles and employee benefit practices of our clients;
- changes in our sales and implementation cycles, especially in the case of our large clients;
- new solution introductions and expansions, or challenges with introduction;
- changes in our pricing or fee policies or those of our competitors;
- the timing and success of new solution introductions by us or our competitors or any other change in the competitive landscape of our industry, including consolidation among our competitors;
- increases in operating expenses that we may incur to grow and expand our operations and to remain competitive;
- our ability to successfully expand our business, whether domestically or internationally;
- breaches of security or privacy;
- changes in stock-based compensation expenses;
- the amount and timing of operating costs and capital expenditures related to the expansion of our business;
- adverse litigation judgments, settlements or other litigation-related costs;
- changes in the legislative or regulatory environment, including with respect to privacy or data protection, or enforcement by government regulators, including fines, orders or consent decrees;
• the cost and potential outcomes of ongoing or future regulatory investigations or examinations, or of future litigation;
• changes in our effective tax rate;
• announcements by competitors or other third parties of significant new products or acquisitions or entrance into certain markets;
• changes in the structure of healthcare payment systems;
• our ability to make accurate accounting estimates and appropriately recognize revenue for our solution for which there are no relevant comparable products;
• changes in accounting standards, policies, guidance, interpretations or principles;
• instability in the financial markets;
• general economic conditions, both domestic and international;
• volatility in the global financial markets;
• political, economic and social instability, including terrorist activities, and any disruption these events may cause to the global economy; and
• changes in business or macroeconomic conditions.

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

**Acquisitions and investments could result in operating difficulties, dilution and other harmful consequences that may adversely impact our business, results of operations and financial condition. Additionally, if we are not able to identify and successfully acquire suitable businesses, our operating results and prospects could be harmed.**

In the past, we have acquired a number of companies, including Diabeto Inc., Retrofit Inc., and myStrength, Inc. and we may in the future make acquisitions to add employees, complementary companies, products, solutions, technologies, or revenue. These transactions could be material to our results of operations and financial condition. We also expect to continue to evaluate and enter into discussions regarding a wide array of potential strategic transactions. The identification of suitable acquisition candidates can be difficult, time-consuming and costly, and we may not be able to complete acquisitions on favorable terms, if at all. The process of integrating an acquired company, business or technology has created, and will continue to create, unforeseen operating difficulties and expenditures. The areas where we face risks include:

• loss of key employees of the acquired company and other challenges associated with integrating new employees into our culture, as well as reputational harm if integration is not successful;
• diversion of management time and focus from operating our business to addressing acquisition integration challenges;
• implementation or remediation of controls, procedures, and policies at the acquired company;
• difficulties in integrating and managing the combined operations, technologies, technology platforms and products of the acquired companies and realizing the anticipated economic, operational and other benefits in a timely manner, which could result in substantial costs and delays or other operational, technical or financial problems;
• integration of the acquired company’s accounting, human resource and other administrative systems, and coordination of product, engineering and sales and marketing function;
assumption of contractual obligations that contain terms that are not beneficial to us, require us to license or waive intellectual property rights, or increase our risk for liabilities;

• failure to successfully further develop the acquired technology or realize our intended business strategy;

• our dependence on unfamiliar affiliates and partners of acquired businesses;

• uncertainty of entry into markets in which we have limited or no prior experience or in which competitors have stronger market positions;

• unanticipated costs associated with pursuing acquisitions;

• failure to find commercial success with the products or services of the acquired company;

• difficulty of transitioning the acquired technology onto our existing platforms and maintaining the security standards for such technology consistent with our other solutions;

• failure to successfully onboard clients or maintain brand quality of acquired companies;

• responsibility for the liabilities of acquired businesses, including those that were not disclosed to us or exceed our estimates, as well as, without limitation, liabilities arising out of their failure to maintain effective data protection and privacy controls and comply with applicable regulations;

• inability to maintain our internal standards, controls, procedures, and policies;

• failure to generate the expected financial results related to an acquisition on a timely manner or at all;

• difficulties in complying with antitrust and other government regulations;

• challenges in integrating and auditing the financial statements of acquired companies that have not historically prepared financial statements in accordance with GAAP;

• potential accounting charges to the extent intangibles recorded in connection with an acquisition, such as goodwill, trademarks, client relationships or intellectual property, are later determined to be impaired and written down in value; and

• failure to accurately forecast the impact of an acquisition transaction.

Moreover, we rely heavily on the representations and warranties provided to us by the sellers of acquired companies, including as they relate to creation of, and ownership and rights in, intellectual property, existence of open source and compliance with laws and contractual requirements. If any of these representations and warranties are inaccurate or breached, such inaccuracy or breach could result in costly litigation and assessment of liability for which there may not be adequate recourse against such sellers, in part due to contractual time limitations and limitations of liability.

Future acquisitions could also result in expenditures of significant cash, dilutive issuances of our equity securities, the incurrence of debt, restrictions on our business, contingent liabilities, amortization expenses or write-offs of goodwill, any of which could harm our financial condition. In addition, any acquisitions we announce could be viewed negatively by channel partners, resellers, clients, members or investors.

Additionally, competition within our industry for acquisitions of business, technologies and assets may become intense. Even if we are able to identify an acquisition that we would like to consummate, we may not be able to complete the acquisition on commercially reasonable terms or the target may be acquired by another company. We may enter into negotiations for acquisitions that are not ultimately consummated. Those negotiations could result in diversion of management time and significant out-of-pocket costs. If we fail to evaluate and execute acquisitions successfully, we may not be able to realize the benefits of these acquisitions, and our operating results could be harmed. If we are unable to successfully address any of these risks, our business, financial condition or operating results could be harmed.
If we are unable to expand our sales and marketing infrastructure, we may fail to enroll sufficient members to meet our forecasts.

We first began offering Livongo for Diabetes in 2014, and we have only limited experience marketing and selling our solutions as well as enrolling members. We derive a substantial majority of our revenue from the sale of Livongo for Diabetes and we expect that this will continue for the next several years. As a result, our financial condition and results of operations are and will continue to be highly dependent on the ability of our sales force to adequately promote, market and sell Livongo for Diabetes. If our sales and marketing representatives fail to achieve their objectives, we may not enter into agreements with new clients, and member enrollment could decrease or may not increase at levels that are in line with our forecasts. Additionally, we have only recently began offering other solutions, and our sales force does not have extensive experience promoting, marketing, and selling these solutions.

A key element of our business strategy is the continued expansion of our sales and marketing infrastructure to drive member enrollment. We rely on insights obtained from previous enrollment experiences and marketing testing, including feedback from our AI+AI engine, to increase enrollment initially as well as on an ongoing basis, but we may not be successful in achieving improved rates of enrollment.

As we increase our sales and marketing efforts with respect to existing or planned solutions, we will need to further expand the reach of our sales and marketing networks. Our future success will depend largely on our ability to continue to hire, train, retain, and motivate skilled sales and marketing representatives with significant industry-specific knowledge in various areas, such as diabetes management techniques and technologies, as well as the competitive landscape for our solutions. Recently hired sales representatives require training and take time to achieve full productivity. If we fail to train recent hires adequately, or if we experience high turnover in our sales force in the future, we cannot be certain that new hires will become as productive as may be necessary to maintain or increase our sales. In addition, the expansion of our sales and marketing personnel will continue to place significant burdens on our management team.

If we are unable to expand our sales and marketing capabilities, we may not be able to effectively commercialize our existing or planned solutions, which could result in reduced member enrollment and the failure of our enrollment rate to increase in line with our forecasts.

We incur significant upfront costs in our channel partner, reseller, client, and member relationships, and if we are unable to maintain and grow these relationships over time, we are likely to fail to recover these costs, which could have a material adverse effect on our business, financial condition and results of operations.

We devote significant resources to establish relationships with our channel partners, resellers, clients, and members and to implement our solutions. This is particularly so in the case of large enterprises that often request or require specific features or functions unique to their particular business processes. Accordingly, our results of operations will depend in substantial part on our ability to enroll our clients’ members to participate in our programs, deliver a successful experience for clients and members, and persuade our channel partners, resellers, clients, and members to maintain and grow their relationship with us over time. We also invest in expanding our channel partner and reseller relationships. Additionally, as our business is growing significantly, our channel partner, reseller, client and member acquisition costs could outpace our build-up of recurring revenue, and we may be unable to reduce our total operating costs through economies of scale such that we are unable to achieve profitability. We incur upfront costs in establishing our channel partner and reseller relationships. If we fail to achieve appropriate economies of scale, if our investments in these relationships fail to materialize or if we fail to manage or anticipate the evolution and demand of the subscription fee model, our enrollment rate may decrease, and our business, financial condition and results of operations could be materially adversely affected.

A substantial portion of our sales comes from a limited number of channel partners and resellers.

Historically, we have relied on a limited number of channel partners and resellers for a substantial portion of our total sales. For example, sales through our top five channel partners, Express Scripts, Inc., CVS Pharmacy, Inc., Health Care Service Corporation, Anthem, Inc., and Highmark Inc., represented 50% of our revenue for the
year ended December 31, 2018, and 59% of our revenue for the three months ended March 31, 2019. Our channel partners and resellers work with us on a non-exclusive basis. If we are unable to establish, maintain or grow these relationships over time or if the channel partners and resellers refer business to our competitors instead, we are likely to fail to recover these costs and our operating results will suffer. The loss of any of our key channel partners or resellers could have an impact on the growth rate of our revenue as we work to obtain new channel partners or replacement relationships. Contracts with our key channel partners or resellers may be terminated before their term expires for various reasons, subject to certain conditions. For example, after a specified period, certain of our contracts are terminable for convenience by our channel partners or resellers, subject to a notice period. Additionally, certain contracts may be terminated immediately by the channel partner or reseller if we go bankrupt, if we lose applicable licenses or are suspended or debarred from participation in government-funded healthcare programs or if we fail to comply with certain specified laws. In order to grow our business, we anticipate that we will continue to depend on our relationships with third parties, including our channel partners and resellers. Identifying channel partners and resellers, and negotiating and documenting relationships with them, requires significant time and resources. Our competitors may be effective in providing incentives to third parties to favor their products or services or to prevent or reduce subscriptions to, or utilization of, our solutions. If we are unsuccessful in establishing or maintaining our relationships with third parties, our ability to compete in the marketplace or to grow our revenue could be impaired and our results of operations may suffer. Even if we are successful, these relationships may not result in increased client and member use of our solution or increased revenue.

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

The timing of our sales and related revenue recognition is difficult to predict because of the length and unpredictability of our sales cycle, particularly with respect to large organizations. The sales cycle for our solution from initial contact with a potential client to enrollment launch varies widely by client, ranging from less than one month to almost a year. Some of our clients, especially in the case of our large clients, undertake a significant and prolonged evaluation process, including to determine whether our solutions meet their unique healthcare needs, which frequently involves evaluation of not only our solution but also an evaluation of other available solutions, which has in the past resulted in extended sales cycles. Our sales efforts involve educating our clients about the ease of use, technical capabilities and potential benefits of our solution. Once a client enters into an agreement with us, we then explain the benefits of our solutions again to eligible employees to encourage them to sign up as a member. During the sales cycle, we expend significant time and money on sales and marketing activities, which lowers our operating margins, particularly if no sale occurs. For example, there may be unexpected delays in a client’s internal procurement processes, particularly for some of our larger clients for which our products represent a very small percentage of their total procurement activity. There are many other factors specific to clients that contribute to the timing of their purchases and the variability of our revenue recognition, including the strategic importance of a particular project to a client, budgetary constraints, and changes in their personnel. In addition, the significance and timing of our product enhancements, and the introduction of new products by our competitors, may also affect our clients’ purchases. Even if a client decides to purchase our solutions, there are many factors affecting the timing of our recognition of revenue, which makes our revenue difficult to forecast. For example, once a client enters into an agreement with us, we work with them to identify the eligible population and then launch an enrollment process. Time from signing to launch typically takes an average of eleven weeks. We do not receive any payment from our clients until members enroll and begin using our solution, which could be months following signing a subscription agreement for our solution. For all of these reasons, it is difficult to predict whether a sale will be completed, the particular period in which a sale will be completed or the period in which revenue from a sale will be recognized.

It is possible that in the future we may experience even longer sales cycles, more complex client needs, higher upfront sales costs and less predictability in completing some of our sales as we continue to expand our direct sales force, expand into new territories and market additional solutions and services. If our sales cycle
lengthens or our substantial upfront sales and implementation investments do not result in sufficient sales to justify our investments, our revenue could be lower than expected and it could have a material adverse effect on our business, financial condition and results of operations.

**If we are unable to attract new clients and expand member enrollment with existing clients, our revenue growth could be slower than we expect, and our business may be adversely affected.**

We generate, and expect to continue to generate, revenue from the enrollment in our solution. As a result, widespread acceptance and use of solutions for chronic conditions in general, and our platform in particular, is critical to our future growth and success. If the market fails to grow or grows more slowly than we currently anticipate, demand for our solutions could be negatively affected.

Our ability to achieve significant growth in revenue in the future will depend, in large part, upon our ability to attract new clients. If we fail to attract new clients and fail to maintain and expand new client relationships, our revenue may grow more slowly than we expect and our business may be adversely affected. Once we enter into an agreement with a client, our revenue will depend on the number of employees we successfully enroll as members. Demand for solutions for chronic conditions in general, and our solution in particular, is affected by a number of factors, many of which are beyond our control. Some of these potential factors include:

- awareness of Applied Health Signals and the adoption of technology in healthcare generally;
- availability of products and services that compete with ours;
- ease of adoption and use;
- features and platform experience;
- performance;
- brand;
- security and privacy; and
- pricing.

Our future revenue growth also depends upon expanding member enrollment with existing clients. If we are not successful in expanding member enrollment in currently contracted solutions or the use of our future solutions by existing clients over time, or if our clients do not renew their agreements or renew their agreements with us at lower prices, our revenue may grow more slowly than expected, may not grow at all, or may decline. Our clients have no obligation to renew their agreements for our solution after the term expires, and our clients may negotiate terms less advantageous to us upon renewal, which may reduce our revenue from these clients. Additionally, although we dedicate resources to our sales and marketing programs, these sales and marketing programs may not have the desired effect and may not expand sales. Our efforts may not result in increased enrollment within existing clients, or additional revenue. If our efforts to expand enrollment within existing clients are not successful, or if our existing clients renew at lower member levels, our business and operating results could be adversely affected.

Client renewals may decline or fluctuate as a result of a number of factors, including the breadth of early deployment of our solution, meaningful reductions in our clients’ spending levels, changes in clients’ business models and use cases, our clients’ satisfaction or dissatisfaction with our solution, our pricing or pricing structure, the pricing or capabilities of products or services offered by our competitors, or the effects of economic conditions. If our clients do not renew their agreements with us, or renew on terms less favorable to us, our revenue may decline.
Potential members’ failure to enroll after a client enters into an agreement with us could negatively affect our business, operating results, financial condition and growth prospects.

We believe our future success will depend in part on our ability to increase both the speed and success of member enrollment, by improving our member engagement and enrollment methodology, hiring and training qualified professionals and increasing our ability to integrate into large-scale, complex technology environments. In some cases, clients initially enter into an agreement with us for our solution, but, for a variety of potential reasons, potential members fail to ultimately enroll at the expected volume. If we are unable to achieve the expected volume of member enrollment, or unable to do so in a timely manner and, as a result, potential members do not utilize our solution, clients are unlikely to renew their agreement with us and we would not be able to generate future revenue from such clients based on transaction or revenue volume and the upsell of additional products and services, and our future operating results could be adversely impacted.

Any failure to offer high-quality member support may adversely affect our relationships with our existing and prospective members, and in turn our business, results of operations and financial condition.

In implementing and using our solutions, our members depend on our member support to resolve issues in a timely manner. We may be unable to respond quickly enough to accommodate short-term increases in demand for member support. We also may be unable to modify the nature, scope and delivery of our services or member support to compete with changes in solutions provided by our competitors. Increased member demand for support could increase costs and adversely affect our results of operations and financial condition. Our sales are highly dependent on our reputation and on positive recommendations from our existing members, clients, channel partners and resellers. Any failure to maintain high-quality member support, or a market perception that we do not maintain high-quality member support, could adversely affect our reputation, our ability to sell our solutions, and in turn our business, results of operations, and financial condition.

If we fail to effectively manage our growth, we may be unable to execute our business plan, adequately address competitive challenges or maintain our corporate culture, and our business, financial condition and results of operations would be harmed.

Since launching our first product in 2014, we have experienced rapid growth and we continue to rapidly and significantly expand our operations. For example, our headcount has grown from 164 employees as of December 31, 2017 to 410 employees as of December 31, 2018 to 471 employees as of March 31, 2019. This expansion increases the complexity of our business and places significant strain on our management, personnel, operations, systems, technical performance, financial resources, and internal financial control and reporting functions. We may not be able to manage growth effectively, which could damage our reputation, limit our growth and negatively affect our operating results.

The growth and expansion of our business creates significant challenges for our management, operational and financial resources. In the event of continued growth of our operations or in the number of our third-party relationships, our information technology systems and our internal controls and procedures may not be adequate to support our operations. To effectively manage our growth, we must continue to improve our operational, financial and management processes and systems and to effectively expand, train and manage our employee base. As our organization continues to grow and we are required to implement more complex organizational management structures, we may find it increasingly difficult to maintain the benefits of our corporate culture, including our ability to quickly develop and launch new and innovative solutions. This could negatively affect our business performance.

We continue to experience growth in our headcount and operations, which will continue to place significant demands on our management and our operational and financial infrastructure. As we continue to grow, we must effectively integrate, develop and motivate a large number of new employees, and we must maintain the beneficial aspects of our corporate culture. To attract top talent, we have had to offer, and believe we will need to
continue to offer, highly competitive compensation packages before we can validate the productivity of those employees. In addition, fluctuations in
the price of our common stock may make it more difficult or costly to use equity compensation to motivate, incentivize and retain our employees. We
face significant competition for talent from other healthcare, technology and high-growth companies, which include both large enterprises and
privately-held companies. We may not be able to hire new employees quickly enough to meet our needs. If we fail to effectively manage our hiring
needs and successfully integrate our new hires, our efficiency and ability to meet our forecasts and our employee morale, productivity and retention
could suffer, and our business, results of operations and financial condition could be adversely affected.

Additionally, if we do not effectively manage the growth of our business and operations, the quality of our solutions could suffer, which could
negatively affect our results of operations and overall business. Further, we have made changes in the past, and will likely make changes in the future,
to our solutions that our clients or members may not like, find useful or agree with. We may also decide to discontinue certain features, solutions or
services or increase fees for any of our features or services. If clients or members are unhappy with these changes, they may decrease their usage of our
solutions.

Our rapid growth makes it difficult to evaluate our future prospects. The estimates of market opportunity and forecasts of market growth included in
this prospectus may prove to be inaccurate, and even if the markets in which we compete achieve the forecasted growth, our business may not grow
at similar rates, or at all.

Our rapid growth may make it difficult to evaluate our future prospects. Our ability to forecast our future results of operations is subject to a
number of uncertainties, including our ability to effectively plan for and model future growth. We have encountered in the past, and may encounter in
the future, risks and uncertainties frequently experienced by growing companies in rapidly changing industries. Market opportunity and market size
estimates, as well as growth forecasts, included in this prospectus are subject to significant uncertainty and are based on assumptions and estimates
which may not prove to be accurate. Even if the markets in which we compete meet the size estimates and growth forecasts included in this prospectus,
our business may not grow at similar rates, or at all. If we fail to achieve the necessary level of efficiency in our organization as it grows, or if we are not
able to accurately forecast future growth, our business, results of operations and financial condition could be harmed.

If we are not able to develop and release new solutions and services, or successful enhancements, new features and modifications to our existing
solutions and services, our business could be adversely affected.

The markets in which we operate are characterized by rapid technological change, frequent new product and service introductions and
enhancements, changing client demands, and evolving industry standards. The introduction of products and services embodying new technologies can
quickly make existing products and services obsolete and unmarketable. Additionally, changes in laws and regulations could impact the usefulness of
our solution and could necessitate changes or modifications to our solution to accommodate such changes. We invest substantial resources in
researching and developing new solutions and enhancing our solutions by incorporating additional features, improving functionality, and adding
other improvements to meet our members’ evolving demands. The success of any enhancements or improvements to our solutions or any new solutions
depends on several factors, including timely completion, competitive pricing, adequate quality testing, integration with new and existing technologies
in our solutions and third-party partners’ technologies and overall market acceptance. We may not succeed in developing, marketing and delivering on
a timely and cost-effective basis enhancements or improvements to our solutions or any new solutions that respond to continued changes in market
demands or new client requirements, and any enhancements or improvements to our solutions or any new solutions may not achieve market
acceptance. Since developing or acquiring our solutions is complex, the timetable for the release of new solutions and enhancements to existing
solutions is difficult to predict, and we may not offer new solutions and updates as rapidly as our clients require or expect. Any new solutions that we
develop or acquire may not be introduced in a timely or cost-effective manner, may contain errors or defects, or may not achieve the broad market
acceptance necessary to generate sufficient revenue. Moreover, even if we
introduce new solutions, we may experience a decline in revenue of our existing solutions that is not offset by revenue from the new solutions. For example, clients may delay making purchases of new solutions to permit them to make a more thorough evaluation of these solutions or until industry and marketplace reviews become widely available. Some clients may hesitate to migrate to a new solution due to concerns regarding the performance of the new solution. In addition, we may lose existing clients who choose a competitor’s products and services. This could result in a temporary or permanent revenue shortfall and adversely affect our business.

The introduction of new products and solutions by competitors or the development of entirely new technologies to replace existing offerings could make our solutions obsolete or adversely affect our business, results of operations and financial condition. We may experience difficulties with software development, design or marketing that could delay or prevent our development, introduction or implementation of additional features or capabilities. If clients and members do not widely purchase and adopt our solutions, we may not be able to realize a return on our investment. If we do not accurately anticipate client and member demand or we are unable to develop, license or acquire new features and capabilities on a timely and cost-effective basis, or if such enhancements do not achieve market acceptance, it could result in adverse publicity, loss of revenue or market acceptance or claims by clients or members brought against us, each of which could have a material and adverse effect on our reputation, business, results of operations and financial condition.

We may enter into collaborations, in-licensing arrangements, joint ventures, strategic alliances or partnerships with third-parties that may not result in the development of commercially viable solutions or the generation of significant future revenues.

In the ordinary course of our business, we may enter into collaborations, in-licensing arrangements, joint ventures, strategic alliances, or technology partnerships to develop proposed solutions and to pursue new markets, such as our partnership with Amazon. Proposing, negotiating, and implementing collaborations, in-licensing arrangements, joint ventures, strategic alliances, or partnerships may be a lengthy and complex process. Other companies, including those with substantially greater financial, marketing, sales, technology or other business resources, may compete with us for these opportunities or arrangements. We may not identify, secure or complete any such transactions or arrangements in a timely manner, on a cost-effective basis, on acceptable terms or at all. We have limited institutional knowledge and experience with respect to these business development activities, and we may also not realize the anticipated benefits of any such transaction or arrangement. In particular, these collaborations may not result in the development of solutions that achieve commercial success or result in significant revenues and could be terminated prior to developing any solutions.

Additionally, we may not be in a position to exercise sole decision making authority regarding the transaction or arrangement, which could create the potential risk of creating impasses on decisions, and our collaborators may have economic or business interests or goals that are, or that may become, inconsistent with our business interests or goals. It is possible that conflicts may arise with our collaborators, such as conflicts concerning the achievement of performance milestones, or the interpretation of significant terms under any agreement, such as those related to financial obligations or the ownership or control of intellectual property developed during the collaboration. If any conflicts arise with our current or future collaborators, they may act in their self-interest, which may be adverse to our best interest, and they may breach their obligations to us. In addition, we have limited control over the amount and timing of resources that our current collaborators or any future collaborators devote to our collaborators’ or our future solutions. Disputes between us and our collaborators may result in litigation or arbitration which would increase our expenses and divert the attention of our management. Further, these transactions and arrangements are contractual in nature and may be terminated or dissolved under the terms of the applicable agreements and, in such event, we may not continue to have rights to the products relating to such transaction or arrangement or may need to purchase such rights at a premium.
Any failure to offer high-quality implementation, member enrollment and ongoing support may adversely affect our relationships with our clients, and in turn our business, results of operations and financial condition.

Though we assist with targeted marketing campaigns, we do not control our clients’ enrollment schedules. As a result, if our clients do not allocate the internal resources necessary for a successful enrollment for their employees, or enrollment launch date is delayed, we could incur significant costs, our enrollment rate may decline, clients could become dissatisfied and decide not to increase utilization of our solution or not to implement our solution beyond an initial period prior to their term commitment. In addition, competitors with more efficient operating models and/or lower implementation costs could jeopardize our client relationships.

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

We are continually executing on growth initiatives, strategies and operating plans designed to enhance our business and extend our solutions to address additional chronic conditions. The anticipated benefits from these efforts are based on several assumptions that may prove to be inaccurate. Moreover, we may not be able to successfully complete these growth initiatives, strategies and operating plans and realize all of the benefits, including growth targets and cost savings, that we expect to achieve or it may be more costly to do so than we anticipate. A variety of risks could cause us not to realize some or all of the expected benefits. These risks include, among others, delays in the anticipated timing of activities related to such growth initiatives, strategies and operating plans, increased difficulty and cost in implementing these efforts, including difficulties in complying with new regulatory requirements and the incurrence of other unexpected costs associated with operating our business. Moreover, our continued implementation of these programs may disrupt our operations and performance. As a result, we cannot assure you that we will realize these benefits. If, for any reason, the benefits we realize are less than our estimates or the implementation of these growth initiatives, strategies and operating plans adversely affect our operations or cost more or take longer to effectuate than we expect, or if our assumptions prove inaccurate, our business, financial condition and results of operations may be materially adversely affected.

Expansion into international markets is important for our long-term growth, and as we expand internationally, we will face additional business, political, regulatory, operational, financial and economic risks, any of which could increase our costs and hinder such growth.

Expanding our business to attract clients and members in countries other than the United States is an element of our long-term business strategy. An important part of targeting international markets is increasing our brand awareness and establishing relationships with partners internationally. Doing business internationally involves a number of risks, including:

- multiple, conflicting and changing laws and regulations such as tax laws, privacy and data protection laws and regulations, export and import restrictions, employment laws, regulatory requirements and other governmental approvals, permits and licenses;
- obtaining regulatory approvals or clearances where required for the sale of our solution, devices and services in various countries;
- requirements to maintain data and the processing of that data on servers located within the United States or in such countries;
- protecting and enforcing our intellectual property rights;
- complexities associated with managing multiple payor reimbursement regimes, government payors;
- logistics and regulations associated with shipping our blood glucose meter, connected blood pressure monitor and cuff, and connected weight-scale;
- competition from companies with significant market share in our market and with a better understanding of user preferences;
financial risks, such as longer payment cycles, difficulty collecting accounts receivable, the effect of local and regional financial pressures on demand and payment for our products and services and exposure to foreign currency exchange rate fluctuations;

natural disasters, political and economic instability, including wars, terrorism, political unrest, outbreak of disease, boycotts, curtailment of trade, and other market restrictions; and

regulatory and compliance risks that relate to maintaining accurate information and control over activities subject to regulation under the U.S. Foreign Corrupt Practices Act, or the FCPA, and comparable laws and regulations in other countries.

Our ability to continue to expand our business and to attract talented employees, clients and members in various international markets will require considerable management attention and resources and is subject to the particular challenges of supporting a rapidly growing business in an environment of multiple languages, cultures, customs, legal systems, alternative dispute resolution systems, regulatory systems and commercial infrastructures. Entering new international markets will be expensive, our ability to successfully gain market acceptance in any particular market is uncertain and the distraction of our senior management team could harm our business, results of operation and financial condition.

Economic uncertainty or downturns, particularly as it impacts particular industries, could adversely affect our business and operating results.

In recent years, the United States and other significant markets have experienced cyclical downturns and worldwide economic conditions remain uncertain. Economic uncertainty and associated macroeconomic conditions make it extremely difficult for our clients and us to accurately forecast and plan future business activities, and could cause our clients to slow spending on our solution, which could delay and lengthen sales cycles. Furthermore, during uncertain economic times our clients may face issues gaining timely access to sufficient credit, which could result in an impairment of their ability to make timely payments to us. If that were to occur, we may be required to increase our allowance for doubtful accounts and our results of operations could be negatively impacted.

Furthermore, we have clients in a variety of different industries. A significant downturn in the economic activity attributable to any particular industry may cause organizations to react by reducing their capital and operating expenditures in general or by specifically reducing their spending on healthcare matters. In addition, our clients may delay or cancel healthcare projects or seek to lower their costs by renegotiating vendor contracts. To the extent purchases of our solution are perceived by clients and potential clients to be discretionary, our revenue may be disproportionately affected by delays or reductions in general healthcare spending. Also, competitors may respond to challenging market conditions by lowering prices and attempting to lure away our clients.

We cannot predict the timing, strength, or duration of any economic slowdown or any subsequent recovery generally, or any industry in particular. If the conditions in the general economy and the markets in which we operate worsen from present levels, our business, financial condition and results of operations could be materially adversely affected.

We depend on a limited number of third-party suppliers for certain components, and the loss of any of these suppliers, or their inability to provide us with an adequate supply of materials, could harm our business.

We utilize a single third-party manufacturing vendor to build and assemble our blood glucose meter, and we rely on single suppliers for our blood pressure monitor and cuff and glucose sensor test strips. The hardware components included in such devices are sourced from various suppliers by the manufacturers thereof and are principally industry standard parts and components that are available from multiple vendors. Quality or performance failures of the devices or changes in the contractors’ or vendors’ financial or business condition.
could disrupt our ability to supply quality products to our clients and thereby have a material adverse impact on our business, financial condition and results of operations.

For our business strategy to be successful, our suppliers must be able to provide us with components in sufficient quantities, in compliance with regulatory requirements and quality control standards, in accordance with agreed upon specifications, at acceptable costs and on a timely basis. Increases in our product sales, whether forecasted or unanticipated, could strain the ability of our suppliers to deliver an increasingly large supply of components in a manner that meets these various requirements.

We do not have long-term supply agreements with our suppliers and, in many cases, we make our purchases on a purchase order basis. Under our supply agreements, we have no obligation to buy any given quantity of products, and our suppliers have no obligation to manufacture for us or sell to us any given quantity of products. As a result, our ability to purchase adequate quantities of our products may be limited. Additionally, our suppliers may encounter problems that limit their ability to manufacture products for us, including financial difficulties or damage to their manufacturing equipment or facilities. If we fail to obtain sufficient quantities of high quality components to meet demand on a timely basis, we could lose clients, our reputation may be harmed and our business could suffer. For certain of our contracts with channel partners, resellers and clients, we have obligations to provide a blood glucose meter and other supplies to new members within a certain specified period of time, and/or to provide replacements for defective blood glucose meters within a certain specified period of time. If we are regularly unable to meet those obligations, our channel partners, resellers, or clients may decide to terminate their contracts.

Depending on a limited number of suppliers, or on a sole supplier, exposes us to risks, including limited control over pricing, availability, quality and delivery schedules. Moreover, due to the limited amount of our sales to date, we do not have long-standing relationships with our manufacturers and may not be able to convince suppliers to continue to make components available to us unless there is demand for such components from their other clients. As a result, there is a risk that certain components could be discontinued and no longer available to us. If any one or more of our suppliers cease to provide us with sufficient quantities of components in a timely manner or on terms acceptable to us, we would have to seek alternative sources of supply. Because of factors such as the proprietary nature of our solution, our quality control standards and regulatory requirements, we cannot quickly engage additional or replacement suppliers for some of our critical components. Failure of any of our suppliers to deliver products at the level our business requires would limit our ability to meet our sales commitments, which could harm our reputation and could have a material adverse effect on our business. We may also have difficulty qualifying new suppliers and obtaining similar components from other suppliers that are acceptable to the U.S. Food and Drug Administration, or the FDA, or other regulatory agencies, and the failure of our suppliers to comply with strictly enforced regulatory and quality requirements could expose us to regulatory action including warning letters, product recalls, termination of distribution, product seizures or civil penalties. It could also require us to cease using the components, seek alternative components or technologies and modify our solution to incorporate alternative components or technologies, which could result in a requirement to seek additional regulatory approvals or clearances for alternative components used in our medical devices. Any disruption of this nature or increased expenses could harm our commercialization efforts and adversely affect our operating results.

We depend on our talent to grow and operate our business, and if we are unable to hire, integrate, develop, motivate and retain our personnel, we may not be able to grow effectively.

Our success depends in large part on our ability to attract and retain high-quality management in sales, services, engineering, marketing, operations, finance and support functions, especially in the San Francisco Bay Area and Chicago metropolitan area. Competition for qualified employees is intense in our industry, and the loss of even a few qualified employees, or an inability to attract, retain and motivate additional highly skilled employees required for the planned expansion of our business could harm our operating results and impair our ability to grow. To attract and retain key personnel, we use various measures, including an equity incentive program for key executive officers and other employees. These measures may not be enough to attract and retain the personnel we require to operate our business effectively.
As we continue to grow, we may be unable to continue to attract or retain the personnel we need to maintain our competitive position. In addition to hiring new employees, we must continue to focus on retaining our best talent. Competition for these resources, particularly for engineers, is intense. We may need to invest significant amounts of cash and equity for new and existing employees and we may never realize returns on these investments. If we are not able to effectively increase and retain our talent, our ability to achieve our strategic objectives will be adversely impacted, and our business will be harmed. The loss of one or more of our key employees, and any failure to have in place and execute an effective succession plan for key executives, could seriously harm our business. Employees may be more likely to leave us if the shares of our capital stock they own or the shares of our capital stock underlying their equity incentive awards have significantly reduced in value or the vested shares of our capital stock they own or vested shares of our capital stock underlying their equity incentive awards have significantly appreciated. Many of our employees may receive significant proceeds from sales of our equity in the public markets after this offering, which may reduce their motivation to continue to work for us.

In addition, our future also depends on the continued contributions of our senior management team and other key personnel, each of whom would be difficult to replace. In particular, Glen Tullman, our Executive Chairman, is critical to our future vision and strategic direction. We rely on our leadership team in the areas of operations, research and development, marketing, sales, and general and administrative functions. Although we have entered into employment agreements or offer letters with our key employees, these agreements have no specific duration and constitute at-will employment, and we do not maintain key person life insurance for some of our key employees. In addition, from time to time, there may be changes in our senior management team that may be disruptive to our business. If our senior management team, including any new hires that we may make, fails to work together effectively and to execute our plans and strategies on a timely basis, our business, results of operations and financial condition could be harmed.

Our corporate culture has contributed to our success, and if we cannot maintain this culture as we grow, we could lose the innovation, creativity and teamwork fostered by our culture and our business may be harmed.

We believe that our culture has been and will continue to be a critical contributor to our success. We expect to continue to hire aggressively as we expand, and we believe our corporate culture has been crucial in our success and our ability to attract highly skilled personnel. If we do not continue to develop our corporate culture or maintain and preserve our core values as we grow and evolve both in the United States and internationally, we may be unable to foster the innovation, curiosity, creativity, focus on execution, teamwork and the facilitation of critical knowledge transfer and knowledge sharing we believe we need to support our growth. Moreover, liquidity available to our employee securityholders following this offering could lead to disparities of wealth among our employees, which could adversely impact relations among employees and our culture in general. Our anticipated headcount growth and our transition from a private company to a public company may result in a change to our corporate culture, which could harm our business.

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

We believe that maintaining and enhancing our reputation and brand recognition is critical to our relationships with existing channel partners and clients, and to our ability to attract new channel partners and clients. The promotion of our brand may require us to make substantial investments and we anticipate that, as our market becomes increasingly competitive, these marketing initiatives may become increasingly difficult and expensive. Brand promotion and marketing activities may not be successful or yield increased revenue, and to the extent that these activities yield increased revenue, the increased revenue may not offset the expenses we incur and our results of operations could be harmed. In addition, any factor that diminishes our reputation or that of our management, including failing to meet the expectations of our channel partners and clients, could harm our reputation and brand and make it substantially more difficult for us to attract new channel partners and clients. If we do not successfully maintain and enhance our reputation and brand recognition, our business may not grow.
and we could lose our relationships with channel partners and clients, which would harm our business, financial condition and results of operations.

Security breaches, loss of data and other disruptions could compromise sensitive information related to our business or members, 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 collect, store, use and disclose sensitive data, including protected health information, or PHI, and other types of personal data or personally identifiable information, or PII. We also process and store, and use additional third parties to process and store, sensitive information including intellectual property and other proprietary business information, including that of our members and partners. Our member information is encrypted but not always de-identified. We manage and maintain our solution and data utilizing a combination of on-site systems, managed data center systems and cloud-based computing center systems.

We are highly dependent on information technology networks and systems, including the internet, to securely process, transmit and store this critical information. Security breaches of this infrastructure, including physical or electronic break-ins, computer viruses, attacks by hackers and similar breaches, and employee or contractor error, negligence or malfeasance, can create system disruptions, shutdowns or unauthorized disclosure or modifications of confidential information, causing member health information to be accessed or acquired without authorization or to become publicly available. We utilize third-party service providers for important aspects of the collection, storage and transmission of client, user and patient information, and other confidential and sensitive information, and therefore rely on third parties to manage functions that have material cybersecurity risks. Because of the sensitivity of the PHI, other PII, and other confidential information we and our service providers collect, store, transmit, and otherwise process, the security of our technology platform and other aspects of our services, including those provided or facilitated by our third-party service providers, are important to our operations and business strategy. We take certain administrative, physical and technological safeguards to address these risks, such as by requiring outsourcing subcontractors who handle client, user and patient information for us to enter into agreements that contractually obligate those subcontractors to use reasonable efforts to safeguard PHI, other PII, and other sensitive information. Measures taken to protect our systems, those of our subcontractors, or the PHI, other PII, or other sensitive data we or our subcontractors process or maintain, may not adequately protect us from the risks associated with the collection, storage and transmission of such information. Although we take steps to help protect confidential and other sensitive information from unauthorized access or disclosure, our information technology and infrastructure may be vulnerable to attacks by hackers or viruses, failures or breaches due to third-party action, employee negligence or error, malfeasance or other disruptions.

A security breach or privacy violation that leads to disclosure or unauthorized use or modification of, or that prevents access to or otherwise impacts the confidentiality, security, or integrity of, member information, including PHI or other PII, or other sensitive information we or our subcontractors maintain or otherwise process, could harm our reputation, compel us to comply with breach notification laws, cause us to incur significant costs for remediation, fines, penalties, notification to individuals and for measures intended to repair or replace systems or technology and to prevent future occurrences, potential increases in insurance premiums, and require us to verify the accuracy of database contents, resulting in increased costs or loss of revenue. If we are unable to prevent such security breaches or privacy violations or implement satisfactory remedial measures, or if it is perceived that we have been unable to do so, our operations could be disrupted, we may be unable to provide access to our platform, and could suffer a loss of clients or users or a decrease in the use of our platform, and we may suffer loss of reputation, adverse impacts on client, user and investor confidence, financial loss, governmental investigations or other actions, regulatory or contractual penalties, and other claims and liability. In addition, security breaches and other inappropriate access to, or acquisition or processing of, information can be difficult to detect, and any delay in identifying such incidents or in providing any notification of such incidents may lead to increased harm.
Any such breach or interruption of our systems or any of our third-party information technology partners, could compromise our networks or data security processes and sensitive information could be inaccessible or could be accessed by unauthorized parties, publicly disclosed, lost or stolen. Any such interruption in access, improper access, disclosure or other loss of information could result in legal claims or proceedings, liability under laws and regulations that protect the privacy of member information or other personal information, such as the Health Insurance Portability and Accountability Act of 1996, or HIPAA, and the General Data Protection Regulation, or GDPR, and regulatory penalties. Unauthorized access, loss or dissemination could also disrupt our operations, including our ability to perform our services, provide member assistance services, conduct research and development activities, collect, process, and prepare company financial information, provide information about our current and future solutions and engage in other user and clinician education and outreach efforts. Any such breach could also result in the compromise of our trade secrets and other proprietary information, which could adversely affect our business and competitive position. While we maintain insurance covering certain security and privacy damages and claim expenses, we may not carry insurance or maintain coverage sufficient to compensate for all liability and in any event, insurance coverage would not address the reputational damage that could result from a security incident.

If we or our third-party suppliers fail to comply with the FDA’s Quality Systems Regulation, our ability to distribute medical devices that are provided to members as part of our solution could be impaired.

We and certain of our third-party suppliers are required to comply with the FDA’s Quality System Regulation, or QSR, which covers the methods and documentation of the design, testing, production, control, quality assurance, labeling, packaging, sterilization, storage and shipping of medical devices that we distribute as part of our solution. The FDA audits compliance with the QSR through periodic announced and unannounced inspections of manufacturing and other facilities. The FDA may impose inspections or audits at any time. We have been inspected by the FDA in 2016 and 2018, with each inspection resulting in the FDA auditor issuing a FDA Form 483 Note of Observation that we have been able to respond to with corrective actions. If we or our suppliers have significant non-compliance issues or if any corrective action plan that we or our suppliers propose in response to observed deficiencies is not sufficient, the FDA could take enforcement action against us and our third-party suppliers. Any of the foregoing actions could have a material adverse effect on our business, financial condition and results of operations.

Our medical device operations are subject to FDA regulatory requirements.

We are regulated by the FDA as a medical device manufacturer, and the medical devices that we distribute as part of our solution are subject to extensive regulation by the FDA. Government regulations specific to medical devices are wide ranging and govern, among other things:

• product design, development and manufacture;
• laboratory, preclinical and clinical testing, labeling, packaging, storage, and distribution;
• premarketing clearance or approval;
• record keeping;
• product marketing, promotion and advertising, sales and distribution; and
• post-marketing surveillance, including reporting of deaths, serious injuries and product malfunctions, recalls, corrections and removals.

Before a new medical device or a new intended use for a device in commercial distribution, can be marketed in the United States, a company must first submit and receive either 510(k) clearance pursuant to section 510(k) of the Food, Drug, and Cosmetic Act, or FDCA, or approval of a premarket approval, or PMA application from the FDA, unless an exemption applies. In the 510(k) clearance process, the FDA must determine that a proposed device is “substantially equivalent” to a device legally on the market, know as a “predicate” device, in order to
clear the proposed device for marketing. To be substantially equivalent, the proposed device must have the same intended use as the predicate device, and either have the same technological characteristics as the predicate device or have different technological characteristics and not raise different questions of safety or effectiveness than the predicate device. Clinical data is sometimes required to support substantial equivalence. Failure to demonstrate substantial equivalence to a predicate device to the FDA’s satisfaction will require the submission and approval by the FDA of a PMA application. The FDA’s 510(k) clearance process usually takes from three to 12 months, but may last longer. The process for obtaining a PMA approval takes from one to three years, or even longer, from the time the PMA is submitted to the FDA until an approval is obtained. Any delay or failure to obtain necessary regulatory approvals or clearances would have a material adverse effect on our business, financial condition and results of operations. We have obtained 510(k) clearance to distribute our glucose testing meter and test strips that we offer as part of our solution.

In addition, we are required to timely submit various reports with the FDA, including reports that medical devices that we distribute as part of our solution may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur. If these reports are not filed in a timely manner, regulators may impose sanctions and we may be subject to product liability or regulatory enforcement actions, all of which could harm our business.

We have in the past, and may in the future, initiate a correction or removal for the medical devices that we distribute as part of our solution to reduce a risk to health posed by our solution. For example, in 2015, we determined that the instructions provided with our test strips were incomplete. We distributed revised instructions to our members and submitted a publicly available Correction and Removal report to the FDA. This report and other reports could be classified by the FDA as a device recall which could lead to increased scrutiny by the FDA, other international regulatory agencies and our clients regarding the quality and safety of our solution. Additionally, we are aware that our connected weight scale can overheat due to user error if the member incorrectly installs the batteries. We have taken steps to eliminate such occurrences, but any future incident related to battery installation in our scale or other device could have a negative impact on our reputation and operating results. Corrective actions can be costly, time-consuming, and divert resources from other portion of our business. Furthermore, the submission of these reports could be used by competitors against us, which could harm our reputation.

The FDA and the Federal Trade Commission, or FTC, also regulate the advertising and promotion of our solution and services to ensure that the claims we make are consistent with our regulatory clearances, that there is adequate and reasonable data to substantiate the claims and that our promotional labeling and advertising is neither false nor misleading. If the FDA or FTC determines that any of our advertising or promotional claims are misleading, not substantiated or not permissible, we may be subject to enforcement actions, including warning letters, and we may be required to revise our promotional claims and make other corrections or restitutions.

The FDA and state authorities have broad enforcement powers. Our failure to comply with applicable regulatory requirements could result in enforcement action by the FDA or state agencies, which may include any of the following sanctions:

- adverse publicity, warning letters, fines, injunctions, consent decrees, and civil penalties;
- repair, replacement, refunds, recall, or seizure of our products;
- operating restrictions, partial suspension or total shutdown of production;
- product detention or import refusal;
- denial of our requests for premarket approval of new solutions or services, new intended uses or modifications to existing solutions or services;
Material modifications to our devices may require new 510(k) clearances, premarket approval, or may require us to recall or cease marketing our devices until new clearances or approvals are obtained.

Material modifications to the intended use or technological characteristics of our devices that we distribute as part of our solutions may require new 510(k) clearances or premarket approvals prior to implementing the modifications, or require us to recall or cease marketing the modified devices until these clearances or approvals are obtained. The FDA requires device manufacturers to initially make and document a determination of whether or not a modification requires a new clearance or approval, however, the FDA can review a manufacturer’s decision. Any modification to an FDA-cleared device that would significantly affect its safety or effectiveness or that would constitute a major change in its intended use would require a new 510(k) clearance or approval of a PMA. We may not be able to obtain additional 510(k) clearances or premarket approvals for new products or for modifications to, or additional indications for, our devices in a timely fashion, or at all. Delays in obtaining required future clearances would harm our ability to introduce new or enhanced product in a timely manner, which in turn would harm our future growth. We have made modifications to our medical devices in the past that we believe do not require additional clearances or approvals, and we may make additional modifications in the future. If the FDA disagrees and requires new clearances or approvals for any of these modifications, we may be required to recall and to stop selling or distributing our medical devices as modified, which could harm our operating results and require us to redesign our products. In these circumstances, we may be subject to significant enforcement actions.

If we fail to comply with healthcare and other governmental regulations, we could face substantial penalties and our business, financial condition and results of operations could be adversely affected.

Our solution, as well as our business activities, are subject to a complex set of regulations and rigorous enforcement, including by the FDA, U.S. Department of Justice, U.S. Department of Health and Human Services, or HHS, Office of the Inspector General and Office of Civil Rights, and numerous other federal and state governmental authorities.

Our employees, consultants and commercial partners may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements. Federal and state healthcare laws and regulations that may affect our ability to conduct business include, without limitation:

- the federal Anti-Kickback Statute, which prohibits, among other things, any person from knowingly and willfully offering, soliciting, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual for, or the purchase, order or recommendation of, any good or service for which payment may be made under federal healthcare programs, such as the CMS programs, including Medicare and Medicaid;
- the federal civil false claims and civil monetary penalties laws, including without limitation the federal False Claims Act, which prohibits, among other things, individuals or entities from knowingly presenting, or causing to be presented, false claims, or knowingly using false statements, to obtain payment from the federal government;
- federal criminal laws that prohibit executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;
- the federal Physician Payment Sunshine Act, or Open Payments, created under the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act of 2010.
Act, or Affordable Care Act, and its implementing regulations, which requires manufacturers of drugs, medical devices, biologicals and medical supplies for which payment is available under Medicare, Medicaid, or the Children's Health Insurance Program to report annually to CMS information related to payments or other transfers of value made to licensed physicians and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members;

- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, and its implementing regulations, which impose certain requirements relating to the privacy, security and transmission of protected health information on certain healthcare providers, health plans and healthcare clearinghouses, and their business associates that access or otherwise process individually identifiable health information on their behalf; HIPAA also created criminal liability for knowingly and willfully falsifying or concealing a material fact or making a materially false statement in connection with the delivery of or payment for healthcare benefits, items or services;

- Medical device regulations pursuant to the FDCA, which require, among other things, pre-market clearances, approved labelling, medical device adverse event reporting, and on-going post-market monitoring and quality assurance;

- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers, and state and foreign laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and are in addition to requirements under HIPAA, thus complicating compliance efforts; and

- state laws governing the corporate practice of medicine and other healthcare professions and related fee-splitting laws.

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

Because of the breadth of these laws and the narrowness of available statutory and regulatory exemptions, it is possible that some of our activities could be subject to challenge under one or more of such laws. Any action brought against us for violations of these laws or regulations, even if successfully defended, could cause us to incur significant legal expenses and divert our management’s attention from the operation of our business. We may be subject to private “qui tam” actions brought by individual whistleblowers on behalf of the federal or state governments, with potential liability under the federal False Claims Act including mandatory treble damages and significant per-claim penalties.

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

Our use, disclosure, and other processing of personally identifiable information, including health information, is subject to HIPAA and other federal, state, and foreign privacy and security regulations, and our failure to comply with those regulations or to adequately secure the information we hold could result in significant liability or reputational harm and, in turn, a material adverse effect on our client base, member base and revenue.

Numerous state and federal laws and regulations govern the collection, dissemination, use, privacy, confidentiality, security, availability, integrity, and other processing of PHI and PII. These laws and regulations include HIPAA. HIPAA establishes a set of national privacy and security standards for the protection of protected health information, or PHI, by health plans, healthcare clearinghouses and certain healthcare providers, referred to as covered entities, and the business associates with whom such covered entities contract for services. We are business associates under HIPAA and we execute business associate agreements with our clients.

HIPAA requires covered entities and business associates, such as us, to develop and maintain policies and procedures with respect to PHI that is used or disclosed, including the adoption of administrative, physical and technical safeguards to protect such information. HIPAA also implemented the use of standard transaction code sets and standard identifiers that covered entities must use when submitting or receiving certain electronic healthcare transactions, including activities associated with the billing and collection of healthcare claims.

HIPAA imposes mandatory penalties for certain violations. Penalties for violations of HIPAA and its implementing regulations start at $100 per violation and are not to exceed $50,000 per violation, subject to a cap of $1.5 million for violations of the same standard in a single calendar year. However, a single breach incident can result in violations of multiple standards. HIPAA also authorizes state attorneys general to file suit on behalf of their residents. Courts may award damages, costs and attorneys’ fees related to violations of HIPAA in such cases. While HIPAA does not create a private right of action allowing individuals to sue us in civil court for violations of HIPAA, its standards have been used as the basis for duty of care in state civil suits such as those for negligence or recklessness in the misuse or breach of PHI.

In addition, HIPAA mandates that the Secretary of HHS conduct periodic compliance audits of HIPAA covered entities and business associates for compliance with the HIPAA Privacy and Security Standards. It also tasks HHS with establishing a methodology whereby harmed individuals who were the victims of breaches of unsecured PHI may receive a percentage of the Civil Monetary Penalty fine paid by the violator.

HIPAA further requires that patients be notified of any unauthorized acquisition, access, use or disclosure of their unsecured PHI that compromises the privacy or security of such information, with certain exceptions related to unintentional or inadvertent use or disclosure by employees or authorized individuals. HIPAA specifies that such notifications must be made “without unreasonable delay and in no case later than 60 calendar days after discovery of the breach.” If a breach affects 500 patients or more, it must be reported to HHS without unreasonable delay, and HHS will post the name of the breaching entity on its public web site. Breaches affecting 500 patients or more in the same state or jurisdiction must also be reported to the local media. If a breach involves fewer than 500 people, the covered entity must record it in a log and notify HHS at least annually.

In addition to HIPAA, numerous other federal, state, and foreign laws and regulations protect the confidentiality, privacy, availability, integrity and security of PHI and other types of PII. These laws and regulations in many cases are more restrictive than, and may not be preempted by, HIPAA and its implementing rules. These laws and regulations are often uncertain, contradictory, and subject to changed or differing interpretations, and we expect new laws, rules and regulations regarding privacy, data protection, and
information security to be proposed and enacted in the future. This complex, dynamic legal landscape regarding privacy, data protection, and information security creates significant compliance issues for us and our clients and potentially exposes us to additional expense, adverse publicity and liability. While we have implemented data privacy and security measures in an effort to comply with applicable laws and regulations relating to privacy and data protection, some PHI and other PII or confidential information is transmitted to us by third parties, who may not implement adequate security and privacy measures, and it is possible that laws, rules and regulations relating to privacy, data protection, or information security may be interpreted and applied in a manner that is inconsistent with our practices or those of third parties who transmit PHI and other PII or confidential information to us. If we or these third parties are found to have violated such laws, rules or regulations, it could result in government-imposed fines, orders requiring that we or these third parties change our or their practices, or criminal charges, which could adversely affect our business. Complying with these various laws and regulations could cause us to incur substantial costs or require us to change our business practices, systems and compliance procedures in a manner adverse to our business.

We also publish statements to our resellers, channel partners, clients and members that describe how we handle and protect PHI. 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, costs of responding to investigations, defending against litigation, settling claims, and complying with regulatory or court orders. Any of the foregoing consequences could seriously harm our business and our financial results. Furthermore, the costs of compliance with, and other burdens imposed by, the laws, regulations and policies that are applicable to the businesses of our clients may limit the use and adoption of, and reduce the overall demand for, our platform. Any of the foregoing consequences could have a material adverse impact on our business and our financial results.

Public scrutiny of internet privacy and security issues may result in increased regulation and different industry standards, which could deter or prevent us from providing our products to our clients, thereby harming our business.

The regulatory framework for privacy and security issues worldwide is evolving and is likely to remain in flux for the foreseeable future. Various government and consumer agencies have also called for new regulation and changes in industry practices. Practices regarding the registration, collection, processing, storage, sharing, disclosure, use and security of personal and other information by companies offering an online service like our solution have recently come under increased public scrutiny.

In the European Union, or EU, the GDPR went into effect on May 25, 2018. If we or our vendors fail to comply with the applicable EU data privacy and security laws, we could be subject to government enforcement actions and significant penalties against us. GDPR introduced new data protection requirements in the EU relating to the consent of individuals to whom personal data relates, the information provided to individuals, the documentation we must retain, the security and confidentiality of personal data, data breach notification and the use of third-party processors in connection with the processing of personal data. GDPR has increased our responsibility and potential liability in relation to personal data that we process, and we may be required to put in place mechanisms to ensure compliance with GDPR. Data protection authorities of the different EU Member States may interpret GDPR differently, and guidance on implementation and compliance practices are often updated or otherwise revised, adding to the complexity of processing personal data in the EU. Any failure by us to comply with GDPR could result in proceedings or actions against us by governmental entities or others, which may subject us to significant penalties and negative publicity, require us to change our business practices, and increase our costs and severely disrupt our business operations. In addition to GDPR in the EU, a number of countries have adopted or are considering privacy laws and regulations that may result in greater compliance efforts. In addition, government agencies and regulators have reviewed, are reviewing and will continue to review the personal data practices of certain online companies. If we are unable to comply with any such reviews or decrees that result in recommendations or binding changes, or if the recommended changes result in degradation of our solution, our business could be harmed.
Our business, including our ability to operate and to expand internationally, could be adversely affected if legislation or regulations are adopted, interpreted or implemented in a manner that is inconsistent with our current business practices and that require changes to these practices, the design of our websites, mobile applications, solutions, features or our privacy policies. In particular, the success of our business has been, and we expect will continue to be, driven by our ability to responsibly gather and use data from data subjects. Therefore, our business could be harmed by any significant change to applicable laws, regulations or industry standards or practices regarding the storage, use or disclosure of data our clients or members share with us, or regarding the manner in which the express or implied consent of clients or members for such collection, analysis and disclosure is obtained. Such changes may require us to modify our solution, possibly in a material manner, and may limit our ability to develop new solutions and features.

The information that we provide to our partners, clients and members could be inaccurate or incomplete, which could harm our business, financial condition, and results of operations.

We provide healthcare-related information for use by our partners, clients and members. Because data in the healthcare industry is fragmented in origin, inconsistent in format and often incomplete, the overall quality of data in the healthcare industry is poor, and we frequently discover data issues and errors. If the data that we provide to our partners, clients or members are incorrect or incomplete or if we make mistakes in the capture or input of these data, our reputation may suffer and our ability to attract and retain partners may be harmed.

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, this coverage may prove to be inadequate or could cease to be available to us on acceptable terms, if at all. Even unsuccessful claims could result in substantial costs 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.

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

In a regulatory climate that is uncertain, our operations may be subject to direct and indirect adoption, expansion or reinterpretation of various laws and regulations. Compliance with these future laws and regulations may require us to change our practices at an undeterminable and possibly significant initial monetary and annual expense. These additional monetary expenditures may increase future overhead, which could have a material adverse effect on our results of operations.

For example, since the Affordable Care Act was enacted, there have been judicial and Congressional challenges to certain aspects of the law, as well as efforts by the Trump administration to repeal or replace certain aspects of Affordable Care Act. Since January 2017, President Trump has signed two Executive Orders and other directives designed to delay the implementation of certain provisions of the Affordable Care Act or otherwise circumvent some of the requirements for health insurance mandated by the Affordable Care Act. Concurrently, Congress has considered legislation that would repeal or replace and replace all or part of the Affordable Care Act. While Congress has not passed comprehensive repeal legislation, two bills affecting the implementation of certain taxes under the Affordable Care Act have been signed into law. The Tax Cuts and Jobs Act of 2017, or Tax Act, included a provision which repealed, effective January 1, 2019, the tax-based shared responsibility payment imposed by the Affordable Care Act on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the “individual mandate.” On January 22, 2018, President Trump signed a continuing resolution on appropriations for fiscal year 2018 that delayed the implementation of certain fees, including the so-called “Cadillac” tax on certain high cost employer-sponsored insurance plans, the annual fee imposed on certain health insurance providers based on market share, and the medical device excise tax on non-exempt medical devices. The Bipartisan Budget Act of 2018, among other things, amended the Affordable Care Act, effective January 1, 2019, to close the coverage gap in most Medicare drug plans, commonly referred to as the “donut hole.” On December 14, 2018, a Texas U.S. District Court Judge
ruled that the Affordable Care Act is unconstitutional in its entirety because the “individual mandate” was repealed by Congress as part of the Tax Act. While the Texas U.S. District Court Judge, as well as the Trump administration and CMS, have stated that the ruling will have no immediate effect pending appeal of the decision, it is unclear how this decision, subsequent appeals, and other efforts to repeal and replace the Affordable Care Act will impact the Affordable Care Act. We continue to evaluate the potential impact of the Affordable Care Act and its possible repeal or replacement on our business.

There could be laws and regulations applicable to our business that we have not identified or that, if changed, may be costly to us, and we cannot predict all the ways in which implementation of such laws and regulations may affect us.

In the states in which we operate, we believe we are in compliance with all applicable material regulations, but, due to the uncertain regulatory environment, certain states may determine that we are in violation of their laws and regulations. In the event that we must remedy such violations, we may be required to modify our solution and services in such states in a manner that undermines our solution’s attractiveness to partners, clients or members, we may become subject to fines or other penalties or, if we determine that the requirements to operate in compliance in such states are overly burdensome, we may elect to terminate our operations in such states. In each case, our revenue may decline and our business, financial condition, and results of operations could be adversely affected.

Additionally, the introduction of new solutions may require us to comply with additional, yet undetermined, laws and regulations. Compliance may require obtaining appropriate state medical board licenses or certificates, increasing our security measures and expending additional resources to monitor developments in applicable rules and ensure compliance. The failure to adequately comply with these future laws and regulations may delay or possibly prevent our solution from being offered to partners, clients and members, which could have a material adverse effect on our business, financial condition, and results of operations.

We are subject to export and import control laws and regulations that could impair our ability to compete in international markets or subject us to liability if we violate such laws and regulations.

We and our products are subject to U.S. import and export controls and trade and economic sanctions 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 Control. These laws prohibit the shipment or provision of certain products and solutions to certain countries, governments and persons targeted by U.S. sanctions. Exports of our products and services must be made in compliance with these laws and regulations. If in the future we are found to be in violation of U.S. sanctions or export control laws, it could result in civil and criminal penalties, including loss of export privileges and substantial fines for us and for the individuals working for us.

In addition, changes in our solution, or future changes in export and import regulations, may prevent our members with international operations from deploying our platform globally or, in some cases, prevent the export or import of our solution to certain countries, governments or persons altogether. Any change in export or import regulations, economic sanctions or related legislation or change in the countries, governments, persons or technologies targeted by such regulations, could result in decreased use of our platform by, or in our decreased ability to export or sell subscriptions to our platform to, existing or potential clients with international operations. Any decreased use of our platform or limitation on our ability to export or sell our solution would likely adversely affect our business, financial condition, and results of operations.

Failure to comply with anti-bribery, anti-corruption and anti-money laundering laws could subject us to penalties and other adverse consequences.

We are subject to the FCPA and other anti-corruption, anti-bribery, and anti-money laundering laws in the jurisdictions in which we do business, both domestic and abroad. These laws generally prohibit us and our
employees from improperly influencing government officials or commercial parties in order to obtain or retain business, direct business to any person or gain any improper advantage. The FCPA and similar applicable anti-bribery and anti-corruption laws also prohibit our third-party business partners, representatives and agents from engaging in corruption and bribery. We and our third-party business partners, representatives and agents may have direct or indirect interactions with officials and employees of government agencies or state-owned or affiliated entities. We may be held liable for the corrupt or other illegal activities of these third-party business partners and intermediaries, our employees, representatives, contractors, channel partners and agents, even if we do not explicitly authorize such activities. These laws also require that we keep accurate books and records and maintain internal controls and compliance procedures designed to prevent any such actions. While we have policies and procedures to address compliance with such laws, we cannot assure you that our employees and agents will not take actions in violation of our policies or applicable law, for which we may be ultimately held responsible. Our exposure for violating these laws will increase as we expand internationally and as we commence sales and operations in foreign jurisdictions. Any violation of the FCPA or other applicable anti-bribery, anti-corruption laws and anti-money laundering laws could result in whistleblower complaints, adverse media coverage, investigations, imposition of significant legal fees, loss of export privileges, severe criminal or civil sanctions or suspension or debarment from U.S. government contracts, substantial diversion of management's attention, drop in stock price or overall adverse consequences to our business, all of which may have an adverse effect on our reputation, business, financial condition, and results of operations.

**If our arrangements with our clients are found to violate state laws prohibiting the corporate practice of medicine or fee splitting, our business, financial condition and our ability to operate in those states could be adversely impacted.**

The laws of most states, including states in which our clients and members are located, prohibit us from practicing medicine, providing any treatment or diagnosis, or otherwise exercising any control over the medical judgments or decisions of licensed physicians and from engaging in certain financial arrangements, such as splitting professional fees with physicians. These laws and their interpretations vary from state to state and are enforced by state courts and regulatory authorities, each with broad discretion. We enter into contracts with our clients to deliver certain services in exchange for fees. Although we seek to substantially comply with applicable state prohibitions on the corporate practice of medicine and fee splitting, state officials who administer these laws or other third parties may successfully challenge our existing organization and contractual arrangements. If such a claim were successful, we could be subject to civil and criminal penalties and could be required to restructure or terminate the applicable contractual arrangements. A determination that these arrangements violate state statutes, or our inability to successfully restructure our relationships with our clients to comply with these statutes, could eliminate clients or members located in certain states from the market for our solution and services, which would have a material adverse effect on our business, financial condition, and results of operations.

**We may become subject to medical liability claims, which could cause us to incur significant expenses and may require us to pay significant damages if not covered by insurance.**

Our business entails the risk of medical liability claims against both our partners and us. Although we carry insurance covering medical malpractice claims in amounts that we believe are appropriate in light of the risks attendant to our business, successful medical liability claims could result in substantial damage awards that exceed the limits of our insurance coverage. In addition, professional liability insurance is expensive and insurance premiums may increase significantly in the future, particularly as we expand our services. As a result, adequate professional liability insurance may not be available to our partners or to us in the future at acceptable costs or at all.

Any claims made against us that are not fully covered by insurance could be costly to defend against, result in substantial damage awards against us and divert the attention of our management and our partners from our operations, which could have a material adverse effect on our business, financial condition, and results of operations. In addition, any claims may adversely affect our business or reputation.
Our business depends upon the interoperability of our solution across a number of medical devices, operating systems and third-party applications that we do not control.

Our solution relies in part on broad interoperability with a range of diverse medical devices, operating systems, and third-party applications. We are dependent on the accessibility of our solution across these third-party operating systems and applications that we do not control. Third-party services and products are constantly evolving, and we may not be able to modify our platform to assure its compatibility with that of other third parties following development changes. Should the interoperability of our solution across devices, operating systems and third-party applications decrease, or if members are unable to easily and seamlessly access our application or information stored in our platform, our business, financial condition, and results of operations could be harmed.

Our proprietary solutions may not operate properly, which could damage our reputation, give rise to claims against us, or divert application of our resources from other purposes, any of which could harm our business and operating results.

Proprietary software and hardware development is time-consuming, expensive and complex, and may involve unforeseen difficulties. We may encounter technical obstacles, and it is possible that we discover additional problems or design defects that prevent our proprietary solution from operating properly. We have experienced product design issues in the past and continue to work to address those and anticipate additional concerns. If our solutions do not function reliably, malfunction, or fail to achieve client expectations in terms of performance, clients could assert liability claims against us or attempt to cancel their contracts with us. This could damage our reputation and impair our ability to attract or maintain clients.

The software underlying our platform is highly complex and may contain undetected errors or vulnerabilities, some of which may only be discovered after the code has been used by our members. Any real or perceived errors, failures, bugs or other vulnerabilities discovered in our code could result in negative publicity and damage to our reputation, loss of clients, loss of members, loss of or delay in market acceptance of our platform, loss of competitive position, loss of revenue or liability for damages, overpayments and/or underpayments, any of which could harm our enrollment rates. Similarly, any real or perceived errors, failures, design flaws or defects in our devices could have similar negative results. In such an event, we may be required or may choose to expend additional resources in order to help correct the problem. Such efforts could be costly, or ultimately unsuccessful. Even if we are successful at remediating issues, we may experience damage to our reputation and brand. There can be no assurance that provisions typically included in our agreements with partners that attempt to limit our exposure to claims would be enforceable or adequate or would otherwise protect us from liabilities or damages with respect to any particular claim. Even if unsuccessful, a claim brought against us by any clients or partners would likely be time-consuming and costly to defend and could seriously damage our reputation and brand.

Indemnity provisions in various agreements potentially expose us to liability for intellectual property infringement and for breaches of our business association agreements.

Our agreements with clients and other third parties may include indemnification provisions under which we agree to indemnify them for losses suffered or incurred as a result of claims of intellectual property infringement, breaches of our business association agreements or other liabilities relating to or arising from, in each case, our solution or other contractual obligations. Typically, our agreements’ indemnification obligations provide for uncapped liability for which we would be responsible, and many of our indemnity provisions survive termination or expiration of the applicable agreement. Large indemnity payments could harm our business, results of operations and financial condition. Whether we have an indemnification provision or not, if disputes arise over our agreements with our channel partners, clients or other third parties, and contractual terms are interpreted adversely to us, we could be subject to liabilities, including fines, remediation, or other penalties. Any dispute with a client with respect to such obligations could have adverse effects on our relationship with that client, other existing clients and new clients and harm our business, financial condition, and results of operations.
If the shift by companies to subscription business models, including consumer adoption of healthcare products and services that are provided through such models, and, in particular, the market for our solution, develops slower than we expect, our growth may slow or stall, and our operating results could be adversely affected.

Our success depends on companies in the healthcare industry shifting to subscription business models and choosing to consume products and services through such models. Many companies may be unwilling or unable to offer their solutions using a subscription business model, especially if they do not believe that the consumers of their products and services would be receptive to such offerings. The adoption of subscription health management tools is still relatively new, and enterprises may not choose to shift their business model or, if they do, they may decide that they do not need a healthcare solution that offers the range of services that we offer. Accordingly, it is difficult to predict adoption rates and demand for our solutions, the future growth rate and size of our market, or the entry of competitive solutions. Factors that may affect market acceptance of our solution include:

- the number of companies shifting to subscription business models;
- the number of consumers and businesses adopting new, flexible ways to consume products and services;
- the security capabilities, reliability and availability of cloud-based services;
- client or member concerns with entrusting a third party to store and manage their data, especially health-related, confidential, or sensitive data;
- our ability to minimize the time and resources required to launch our solution;
- our ability to maintain high levels of member satisfaction;
- our ability to deliver upgrades and other changes to our solution without disruption to our clients or members;
- the level of customization or configuration we offer; and
- the price, performance, and availability of competing products and services.

The markets for subscription products and services and for solutions for chronic conditions may not develop further or may develop slower than we expect. If companies do not shift to subscription business models and subscription health management tools do not achieve widespread adoption, or if there is a reduction in demand for subscription products and services or subscription health management tools caused by technological challenges, weakening economic conditions, security or privacy concerns, decreases in corporate spending, a lack of member acceptance or otherwise, our business could be materially and adversely affected.

We may be required to delay recognition of some of our revenue, which may harm our financial results in any given period.

We may be required to delay recognition of revenue for a significant period of time if we enter into an agreement containing contract terms that include:

- the transaction involves both current products and products that are under development;
- the client requires significant modifications, configurations, or complex interfaces that could delay delivery or acceptance of our solution;
- the transaction involves acceptance criteria or other terms that may delay revenue recognition; or
- the transaction involves payment terms that depend upon contingencies.

Because of these factors and other specific revenue recognition requirements under GAAP, we must have very precise terms in our contracts to begin recognizing revenue when we initially provide access to our
platform. Although we strive to enter into agreements that meet the criteria under GAAP for current revenue recognition on delivered performance obligations, our agreements are often subject to negotiation and revision based on the demands of our clients. The final terms of our agreements sometimes result in deferred revenue recognition, which may adversely affect our financial results in any given period. In addition, more clients may require shorter term contracts or alternative payment arrangements that could reduce the amount of revenue we recognize upon delivery of our products and could adversely affect our short-term financial results.

Furthermore, the presentation of our financial results requires us to make estimates and assumptions that may affect revenue recognition. In some instances, we could reasonably use different estimates and assumptions, and changes in estimates are likely to occur from period to period. Accordingly, actual results could differ significantly from our estimates.

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

We typically enter into a higher percentage of agreements with new clients, as well as renewal agreements with existing clients, in our third and fourth quarters, which results in higher enrollment launch rates in the first quarter. We believe that this results in part from the timing of open enrollment periods of many of our clients. We may be affected by seasonal trends in the future, particularly as our business matures. These effects may become more pronounced as we target larger organizations and their larger budgets for use of our solution. Additionally, this seasonality may be reflected to a much lesser extent, and sometimes may not be immediately apparent, in our revenue. To the extent we experience this seasonality, it may cause fluctuations in our operating results and financial metrics and make forecasting our future operating results and financial metrics more difficult.

We may be subject to legal proceedings and litigation, including intellectual property and privacy disputes, which are costly to defend and could materially harm our business and results of operations.

We may be party to lawsuits and legal proceedings in the normal course of business. These matters are often expensive and disruptive to normal business operations. We may face allegations, lawsuits and regulatory inquiries, audits and investigations regarding data privacy, security, labor and employment, consumer protection and intellectual property infringement, including claims related to privacy, patents, publicity, trademarks, copyrights and other rights. A portion of the technologies we use incorporates open source software, and we may face claims claiming ownership of open source software or patents related to that software, rights to our intellectual property or breach of open source license terms, including a demand to release material portions of our source code or otherwise seeking to enforce the terms of the applicable open source license. We may also face allegations or litigation related to our acquisitions, securities issuances or business practices, including public disclosures about our business. Litigation and regulatory proceedings, and particularly the patent infringement and class action matters we could face, may be protracted and expensive, and the results are difficult to predict. Certain of these matters may include speculative claims for substantial or indeterminate amounts of damages and include claims for injunctive relief. Additionally, our litigation costs could be significant. Adverse outcomes with respect to litigation or any of these legal proceedings may result in significant settlement costs or judgments, penalties and fines, or require us to modify our solution or require us to stop offering certain features, all of which could negatively impact our enrollment rate and revenue growth. We may also become subject to periodic audits, which would likely increase our regulatory compliance costs and may require us to change our business practices, which could negatively impact our revenue growth. Managing legal proceedings, litigation and audits, even if we achieve favorable outcomes, is time-consuming and diverts management’s attention from our business.

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

Furthermore, our business exposes us to potential product liability claims that are inherent in the design, manufacture, testing and sale of medical devices. We could become the subject of product liability lawsuits alleging that component failures, manufacturing flaws, design defects or inadequate disclosure of product-related risks or product-related information resulted in an unsafe condition, injury or death to members. In addition, the misuse of our solution, or the failure of members to adhere to operating guidelines, could cause significant harm to members, including death, which could result in product liability claims. Product liability lawsuits and claims, safety alerts or product recalls, with or without merit, could cause us to incur substantial costs, and could place a significant strain on our financial resources, divert the attention of management from our core business, harm our reputation and adversely affect our ability to attract and retain clients, any of which could have a material adverse effect on our business, financial condition and results of operations.

Although we maintain third-party product liability insurance coverage, it is possible that claims against us may exceed the coverage limits of our insurance policies. Even if any product liability loss is covered by an insurance policy, these policies typically have substantial deductibles for which we are responsible. Product liability claims in excess of applicable insurance coverage could have a material adverse effect on our business, financial condition and results of operations. In addition, any product liability claim brought against us, with or without merit, could result in an increase of our product liability insurance premiums. Insurance coverage varies in cost and can be difficult to obtain, and we cannot guarantee that we will be able to obtain insurance coverage in the future on terms acceptable to us or at all.

The enactment of legislation implementing changes in the U.S. taxation of international business activities, the adoption of other tax reform policies or changes in tax legislation or policies in jurisdictions outside of the United States could materially impact our results of operations and financial condition.

On December 22, 2017, the legislation commonly referred to as the Tax Cuts and Jobs Act of 2017, or the Tax Act, became law, and significantly reformed the Internal Revenue Code of 1986, as amended, or the Code. The Tax Act, among other things, includes changes to U.S. federal tax rates and the taxation of foreign earnings, imposes significant additional limitations on the deductibility of interest and the use of net operating losses generated in tax years beginning after December 31, 2017 allows for the immediate expensing of certain capital expenditures and puts into effect the migration from a “worldwide” system of taxation to a territorial system. We continue to examine the impact the Tax Act may have on our business. Due to our plans to expand into international markets, any changes in the U.S. or international taxation of such activities may increase our worldwide effective tax rate and harm our business, financial condition and results of operations. The impact of the Tax Act and other changes to U.S. and non-U.S. tax laws, and regulations or interpretations thereof, on us or our business is uncertain and could be adverse. We urge prospective investors to consult with their legal and tax advisors with respect to the potential tax consequences of investing in or holding our common stock.

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

Our intellectual property includes the content of our website, our solutions, our software code, our registered and unregistered copyrights, trademarks and our patents and patent applications. We believe that our intellectual property is an essential asset of our business. If we do not adequately protect our intellectual property, our brand and reputation could be harmed and competitors may be able to use our technologies and erode or negate any competitive advantage we may have, which could materially harm our business, negatively affect our position in the marketplace, limit our ability to commercialize our technology and delay or render impossible our achievement of profitability. A failure to protect our intellectual property in a cost-effective and meaningful manner could have a material adverse effect on our ability to compete. We regard the protection of our trade secrets, copyrights, trademarks, trade dress, databases, domain names and patents as critical to our success. We
strive to protect our intellectual property rights by relying on federal, state and common law rights and other rights provided under foreign laws. These laws are subject to change at any time and could further restrict our ability to protect or enforce our intellectual property rights. In addition, the existing laws of certain foreign countries in which we operate may not protect our intellectual property rights to the same extent as do the laws of the United States. We also have a practice of entering into confidentiality and invention assignment agreements with our employees and contractors, and often enter into confidentiality agreements with parties with whom we conduct business in order to limit access to, and disclosure and use of, our proprietary information. In addition, from time to time we make our technology and other intellectual property available to others under license agreements, including open source license agreements and trademark licenses under agreements with our partners for the purpose of co-branding or co-marketing our products or services. However, these contractual arrangements and the other steps we have taken to protect our intellectual property rights may not prevent the misappropriation of our proprietary information, infringement of our intellectual property rights, disclosure of trade secrets and other proprietary information, or deter independent development of similar or competing technologies, duplication of our technologies or efforts to design around our patents by others, and may not provide an adequate remedy in the event of such misappropriation or infringement.

Obtaining and maintaining effective intellectual property rights is expensive, including the costs of defending our rights. We make business decisions about when to seek patent protection for a particular technology and when to rely upon trade secret protection, and the approach we select may ultimately prove to be inadequate. Our issued U.S. patents cover key features of our smart, cellular-connected meter, but we have not yet obtained any issued patents that provide protection for key features of our other products. We are seeking to protect certain of our intellectual property rights through filing applications for copyrights, trademarks, patents and domain names in a number of jurisdictions, a process that is expensive and may not be successful in all jurisdictions. Even in cases where we seek patent protection, there is no assurance that the resulting patents will effectively protect every significant feature of our solutions, technology, or proprietary information, or provide us with any competitive advantages. Moreover, we cannot guarantee that any of our pending patent applications will issue or be approved. The United States Patent and Trademark Office, or the USPTO, also requires compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process and after a patent has issued. There are 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 this occurs, our competitors might be able to enter the market, which would have a material adverse effect on our business. Even where we have intellectual property rights, they may later be found to be unenforceable or have a limited scope of enforceability. In addition, we may not seek to pursue such protection in every jurisdiction. In particular, we believe it is important to maintain, protect and enhance our brands. Accordingly, we pursue the registration of domain names and our trademarks and service marks in the United States and in some jurisdictions outside of the United States. We have already and may, over time, increase our investment in protecting innovations through investments in patents and similar rights, and this process is expensive and time-consuming.

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

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

We have been and may be in the future subject to claims that we violated intellectual property rights of others, which are extremely costly to defend and could require us to pay significant damages and limit our ability to operate.

Companies in our industry, and other intellectual property rights holders seeking to profit from royalties in connection with grants of licenses, own large numbers of patents, copyrights, trademarks, and trade secrets and frequently enter into litigation based on allegations of infringement or other violations of intellectual property rights. Our future success depends in part on not infringing upon the intellectual property rights of others. We have in the past and may in the future receive notices that claim we have misappropriated, infringed, or otherwise misused other parties’ intellectual property rights. There may be intellectual property rights held by others, including issued patents and trademarks or pending applications, that cover significant aspects of our technologies, content, branding or business methods. We may be unaware of the intellectual property rights of others that may cover some or all of our technology. Because patent applications can take years to issue and are often afforded confidentiality for some period of time there may currently be pending applications, unknown to us, that later result in issued patents that could cover one or more of our products. In a patent infringement claim against us, we may assert, as a defense, that we do not infringe the relevant patent claims, that the patent is invalid or both. The strength of our defenses will depend on the patents asserted, the interpretation of these patents, and our ability to invalidate the asserted patents. However, we could be unsuccessful in advancing non-infringement and/or invalidity arguments in our defense. In the United States, issued patents enjoy a presumption of validity, and the party challenging the validity of a patent claim must present clear and convincing evidence of invalidity, which is a high burden of proof. Conversely, the patent owner need only prove infringement by a preponderance of the evidence, which is a lower burden of proof.

Any intellectual property claim against us or parties indemnified by us, regardless of merit, could be time consuming and expensive to settle or litigate and could divert our management’s attention and other resources. These claims also could subject us to significant liability for damages and could result in our having to stop using technology, content, branding or business methods found to be in violation of another party’s rights. We might be required or may opt to seek a license for rights to intellectual property held by others, which may not be available on commercially reasonable terms, or at all. Even if a license is available, we could be required to pay significant royalties, which would increase our operating expenses. We may also be required to develop alternative non-infringing technology, content, branding or business methods, which could require significant effort and expense, be infeasible or make us less competitive in the market. Such disputes could also disrupt our business, which would adversely impact our client satisfaction and ability to attract clients. Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. If we cannot license or develop technology, content, branding or business methods for any allegedly infringing aspect of our business, we may be unable to compete effectively. Additionally, we may be obligated to indemnify our clients or members in connection with litigation and to obtain licenses or refund subscription fees, which could further exhaust our resources. In the case of infringement or misappropriation caused by technology that we obtain from third parties, any indemnification or other contractual protections we obtain from such third parties, if any, may be insufficient to cover the liabilities we incur as a result of such infringement or misappropriation. Any of these results could harm our operating results.
Any disruption of service at our third-party data and call centers or Amazon Web Services could interrupt or delay our ability to deliver our services to our clients.

We currently host our platform, serve our clients and support our operations in the United States primarily from third-party data and call centers and using Amazon Web Services, or AWS, a provider of cloud infrastructure services. We do not have control over the operations of the facilities of our data and call center providers or AWS. These facilities are vulnerable to damage or interruption from earthquakes, hurricanes, floods, fires, cyber security attacks, terrorist attacks, power losses, telecommunications failures and similar events. The occurrence of a natural disaster or an act of terrorism, a decision to close the facilities without adequate notice, or other unanticipated problems could result in lengthy interruptions in our solution. The facilities also could be subject to break-ins, computer viruses, sabotage, intentional acts of vandalism and other misconduct. Our solutions’ continuing and uninterrupted performance is critical to our success. Because our solutions and services are used by our members to manage chronic conditions, it is critical that our solutions be accessible without interruption or degradation of performance. Members may become dissatisfied by any system failure that interrupts our ability to provide our solutions to them. Outages could lead to the triggering of our service level agreements and the issuance of credits to our clients, in which case, we may not be fully indemnified for such losses pursuant to our agreement with AWS. We may not be able to easily switch our AWS operations to another cloud provider if there are disruptions or interference with our use of AWS. Sustained or repeated system failures would reduce the attractiveness of our solution to clients and members and result in contract terminations, thereby reducing revenue. Moreover, negative publicity arising from these types of disruptions could damage our reputation and may adversely impact use of our solution. We may not carry sufficient business interruption insurance to compensate us for losses that may occur as a result of any events that cause interruptions in our service.

Neither our third-party data and call center providers nor AWS have an obligation to renew their agreements with us on commercially reasonable terms, or at all. If we are unable to renew our agreements with these providers on commercially reasonable terms, if our agreements with our providers are prematurely terminated, or if in the future we add additional data or call center providers, we may experience costs or downtime in connection with the transfer to, or the addition of, new providers. If these providers were to increase the cost of their services, we may have to increase the price of our solutions, and our operating results may be adversely impacted.

We rely on internet infrastructure, bandwidth providers, third-party computer hardware and software and other third parties for providing services to our clients and members, and any failure or interruption in the services provided by these third parties could expose us to litigation and negatively impact our relationships with clients and members, adversely affecting our operating results.

Our ability to deliver our internet-based services depends on the development and maintenance of the infrastructure of the internet by third parties. This includes maintenance of a reliable network backbone with the necessary speed, data capacity, bandwidth capacity and security. Our services are designed to operate without interruption. However, we may experience future interruptions and delays in services and availability from time to time. In the event of a catastrophic event with respect to one or more of our systems, we may experience an extended period of system unavailability, which could negatively impact our relationship with clients and members. To operate without interruption, both we and our service providers must guard against:

- damage from fire, power loss, natural disasters and other force majeure events outside our control;
- communications failures;
- software and hardware errors, failures, and crashes;
- security breaches, computer viruses, hacking, denial-of-service attacks, and similar disruptive problems; and
- other potential interruptions.
We also rely on software licensed from third parties in order to offer our services. These licenses are generally commercially available on varying terms. However, it is possible that this software may not continue to be available on commercially reasonable terms, or at all. Any loss of the right to use any of this software could result in delays in the provisioning of our services until equivalent technology is either developed by us, or, if available, is identified, obtained and integrated. Furthermore, our use of additional or alternative third-party software would require us to enter into license agreements with third parties, and integration of our software with new third-party software may require significant work and require substantial investment of our time and resources. Also, any undetected errors or defects in third-party software could prevent the deployment or impair the functionality of our software, delay new updates or enhancements to our solution, result in a failure of our solution, and injure our reputation.

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

As a public company, we will be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, the listing standards of The Nasdaq Stock Market LLC, or Nasdaq, and other applicable securities rules and regulations. We expect that the requirements of these rules and regulations will continue to increase our legal, accounting and financial compliance costs, make some activities more difficult, time-consuming and costly, and place significant strain on our personnel, systems and resources. For example, the Exchange Act requires, among other things, that we file annual, quarterly and current reports with respect to our business and results of operations. As a result of the complexity involved in complying with the rules and regulations applicable to public companies, our management's attention may be diverted from other business concerns, which could harm our business, results of operations and financial condition. Although we have already hired additional employees to assist us in complying with these requirements, we may need to hire more employees in the future or engage outside consultants, which will increase our operating expenses.

In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs, and making some activities more time-consuming. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest substantial resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management’s time and attention from business operations to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be harmed.

We also expect that being a public company and these new rules and regulations will make it more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for us to attract and retain qualified members of our board of directors, particularly to serve on our audit committee and compensation committee, and qualified executive officers.

As a result of disclosure of information in this prospectus and in filings required of a public company, our business and financial condition will become more visible, which may result in an increased risk of threatened or actual litigation, including by competitors and other third parties. If such claims are successful, our business and results of operations could be harmed, and even if the claims do not result in litigation or are resolved in our favor, these claims, and the time and resources necessary to resolve them, could divert the resources of our management and harm our business, results of operations, and financial condition.
We are an “emerging growth company,” and our election to comply with the reduced disclosure requirements as a public company may make our common stock less attractive to investors.

For so long as we remain an “emerging growth company,” as defined in the JOBS Act, we may take advantage of certain exemptions from various requirements that are applicable to public companies that are not “emerging growth companies,” including not being required to comply with the independent auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, being required to provide fewer years of audited financial statements and exemptions from the requirements of holding a non-binding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We would cease to be an “emerging growth company” upon the earliest to occur of: (i) the last day of the fiscal year in which we have more than $1.07 billion in annual revenue; (ii) the date we qualify as a large accelerated filer, with at least $700 million of equity securities held by non-affiliates; (iii) the date on which we have, in any three-year period, issued more than $1.0 billion in non-convertible debt securities; and (iv) the last day of the fiscal year ending after the fifth anniversary of this offering. We may choose to take advantage of some but not all of these reduced reporting burdens, and we have taken advantage of certain reduced reporting burdens in this prospectus. Accordingly, the information contained herein may be different than the information you receive from other public companies in which you hold stock. In addition, the JOBS Act also provides that an “emerging growth company” can take advantage of an extended transition period for complying with new or revised accounting standards. We have elected to take advantage of this extended transition period under the JOBS Act. As a result, our operating results and financial statements may not be comparable to the operating results and financial statements of other companies who have adopted the new or revised accounting standards. It is possible that some investors will find our common stock less attractive as a result, which may result in a less active trading market for our common stock and higher volatility in our stock price.

Investors may find our common stock less attractive because we may rely 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 our stock price may be more volatile and may decline.

We may require additional capital to support business growth, and this capital might not be available on acceptable terms, if at all.

We intend to continue to make investments to support our business growth and may require additional funds to respond to business challenges, including the need to develop new products, services or enhance our existing products or services, enhance our operating infrastructure and acquire complementary businesses and technologies. In order to achieve these objectives, we may make future commitments of capital resources. Accordingly, we may need to engage in equity or debt financings to secure additional funds. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing secured by us in the future could involve restrictive covenants relating to our capital raising activities and other financial and operational matters. In addition, we may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly limited.

If we fail to maintain an effective system of disclosure controls and internal control over financial reporting, our ability to produce timely and accurate financial statements or comply with applicable regulations could be impaired.

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act and the rules and regulations of the applicable listing standards of Nasdaq. We expect that the requirements
of these rules and regulations will continue to increase our legal, accounting and financial compliance costs, make some activities more difficult, time-consuming and costly and place significant strain on our personnel, systems and resources.

The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. 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 will file with the SEC is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and that information required to be disclosed in reports under the Exchange Act is accumulated and communicated to our principal executive and financial officers. We are also continuing to improve our internal control over financial reporting, which includes hiring additional accounting and financial personnel to implement such processes and controls. In order to maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting, we have expended, and anticipate that we will continue to expend, significant resources, including accounting-related costs and significant management oversight. If any of these new or improved controls and systems do not perform as expected, we may experience material weaknesses in our controls.

Our current controls and any new controls that we develop may become inadequate because of changes in conditions in our business. Further, weaknesses in our disclosure controls and internal control over financial reporting may be discovered in the future. Any failure to develop or maintain effective controls or any difficulties encountered in their implementation or improvement could harm our results of operations or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods. Any failure to implement and maintain effective internal control over financial reporting also could adversely affect the results of periodic management evaluations and annual independent registered public accounting firm attestation reports regarding the effectiveness of our internal control over financial reporting that we will eventually be required to include in our periodic reports that will be filed with the SEC. Ineffective disclosure controls and procedures and internal control over financial reporting could also cause investors to lose confidence in our reported financial and other information, which would likely have a negative effect on the trading price of our common stock. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on Nasdaq. We are not currently required to comply with the SEC rules that implement Section 404 of the Sarbanes-Oxley Act and are therefore not required to make a formal assessment of the effectiveness of our internal control over financial reporting for that purpose. As a public company, we will be required to provide an annual management report on the effectiveness of our internal control over financial reporting commencing with our second annual report on Form 10-K.

Our independent registered public accounting firm is not required to formally attest to the effectiveness of our internal control over financial reporting until after we are no longer an “emerging growth company” as defined in the JOBS Act. At such time, our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our internal control over financial reporting is documented, designed or operating. Any failure to maintain effective disclosure controls and internal control over financial reporting could have an adverse effect on our business and results of operations and could cause a decline in the price of our common stock.

We anticipate spending substantial funds in connection with the tax liabilities that arise upon the initial settlement of RSUs in connection with this offering and following this offering. The manner in which we fund these expenditures may have an adverse effect on our financial condition.

We anticipate that we will spend substantial funds to satisfy certain income tax withholding and remittance obligations when we settle our RSUs granted prior to the date of this prospectus, as well as those granted after the date of this prospectus. We have issued RSUs that vest upon the satisfaction of both a service-based vesting condition and a performance-based vesting condition. The service-based vesting condition for the majority of our outstanding RSUs is satisfied over a period of four years. Generally, the performance-based vesting condition is
satisfied upon the earlier of (i) six months and one day after the closing of an initial public offering pursuant to a registration statement under the Securities Act on an active trading market and (ii) an acquisition or change in control of us. When the RSUs vest, we will deliver one share of common stock for each vested RSU on the settlement date. The RSUs vest on the first date upon which both the service-based vesting condition and the performance-based vesting condition are satisfied, and upon vesting we anticipate withholding shares and remitting income taxes on behalf of the holders at the applicable minimum statutory rates, which we refer to as net settlement. Based on number of RSUs outstanding as of March 31, 2019 for which the service-based vesting condition has been satisfied on that date, and assuming the performance vesting condition had been satisfied on that date and the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, we estimate that these income tax withholding and remittance obligations would be approximately $ million in the aggregate. The amount of these obligations could be higher or lower, depending on the price of shares of our common stock and the actual number of RSUs outstanding for which the service-based vesting condition has been satisfied on the initial settlement date for such RSUs. To settle these RSUs on the initial settlement date, based on the number of RSUs outstanding as of March 31, 2019, we would expect to deliver an aggregate of approximately 64,287 shares of our common stock to the RSU holders after withholding an aggregate of approximately 41,101 shares of our common stock.

Our reported financial results may be affected by changes in accounting principles generally accepted in the United States, such as the adoption of ASC 606, and difficulties in implementing these changes could cause us to fail to meet our financial reporting obligations, which could result in regulatory discipline and harm investors’ confidence in us.

Accounting principles generally accepted in the United States are subject to interpretation by the Financial Accounting Standards Board, or FASB, the SEC, and various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our reported financial results, and could affect the reporting of transactions completed before the announcement of a change. In particular, in May 2014, the FASB issued ASC 606, Revenue from Contracts with Customers, which supersedes the revenue recognition requirements in ASC 605, Revenue Recognition. The core principle of ASC 606 is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. As an “emerging growth company,” we are allowed under the JOBS Act to delay adoption of new or revised accounting pronouncements applicable to public companies until such pronouncements are made applicable to private companies. We have elected to take advantage of this extended transition period under the JOBS Act, which resulted in ASC 606 becoming effective for us beginning on January 1, 2019.

We plan to adopt the new revenue standard using the modified retrospective transition method when it becomes effective for us, which is the year ending December 31, 2019 and interim periods beginning after December 31, 2019. We are in the process of reviewing our significant contracts and are evaluating the impact of the new standard. Based on our preliminary impact assessment of the Livongo for Diabetes solution, we believe that the overall promise to our customers is to improve member health results and reduce healthcare costs, and the delivery of this promise would not be possible without the integration of Livongo devices, supplies, access to our web-based platform, and clinical and data services. The promises to transfer the goods and services are not separately identifiable in accordance with ASC 606-10-25-19b, evidenced by the fact that we provide a significant service of integrating the goods and services provided by us (i.e., inputs) into a combined output (i.e., member behavior modifications) that result in the fulfillment of our promise to our customers. We are currently finalizing our assessment of the full accounting impact of the standard; however, we have identified the treatment of variable consideration will be impacted upon our adoption. Additionally, incremental costs of obtaining a contract will be recognized as assets to the extent the period of benefit is greater than one year. We continue to evaluate the effect that the standard will have on our consolidated financial statements, including disclosures, and preliminary assessments are subject to change.
If our estimates or judgments relating to our critical accounting policies prove to be incorrect, our results of operations could be adversely affected.

The preparation of financial statements in conformity with GAAP and our key metrics require management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes and amounts reported in our key metrics. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, as provided in the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” The results of these estimates form the basis for making judgments about the carrying values of assets, liabilities and equity and the amount of revenue and expenses that are not readily apparent from other sources. Significant assumptions and estimates used in preparing our consolidated financial statements include those related to allowance for doubtful accounts, assessment of the useful life and recoverability of long-lived assets, fair value of guarantees included in revenue arrangements, fair values of stock-based awards, warrants, contingent consideration, and income taxes. Our results of operations may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our results of operations to fall below the expectations of securities analysts and investors, resulting in a decline in the trading price of our common stock.

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

As of December 31, 2018, we had U.S. federal net operating loss carryforwards, or NOLs, of $122.8 million and state NOLs of $63.7 million. Unused NOLs for the year ended December 31, 2017 and prior tax years will carry forward to offset future taxable income, if any, until such unused losses expire. Unused losses generated after December 31, 2017, pursuant to the Tax Act, will not expire and may be carried forward indefinitely but will only be deductible to the extent of 80% of current year taxable income in any given year. It is uncertain if and to what extent various states will conform to the Tax Act. As a result, if we earn net taxable income in future years, our pre-2018 NOLs may expire prior to being used and our NOLs generated in 2018 and thereafter will be subject to a percentage limitation. Under Sections 382 and 383 of the Code, if a corporation undergoes an “ownership change,” the corporation’s ability to use its pre-change NOLs, to offset its post-change income and taxes may be limited. In general, an “ownership change” occurs if there is a cumulative change in our ownership by “5% stockholders” that exceed 50 percentage points over a rolling three-year period. We have undergone ownership changes in the past, which have resulted in minor limitations on our ability to utilize our NOLs, and if we undergo an ownership change in connection with or after this offering, our ability to utilize NOLs could be further limited by Section 382 of the Code. Future changes in our stock ownership, some of which are outside of our control, could result in an ownership change under Section 382 of the Code. The existing NOLs of some of our subsidiaries may be subject to limitations arising from ownership changes prior to, or in connection with, their acquisition by us. Furthermore, our ability to utilize NOLs of companies that we may acquire in the future may be subject to limitations. There is also a risk that due to regulatory changes, such as suspensions on the use of NOLs or other unforeseen reasons, our existing NOLs could expire or otherwise be unavailable to offset future income tax liabilities, including for state tax purposes. For these reasons, we may not be able to utilize some portion of our NOLs, none of which are currently reflected on our balance sheet, even if we attain profitability.

The applicability of sales, use and other tax laws or regulations on our business is uncertain. Adverse tax laws or regulations could be enacted or existing laws could be applied to us or our clients, which could subject us to additional tax liability and related interest and penalties, increase the costs of our solution and adversely impact our business.

The application of federal, state, local and international tax laws to services provided electronically is evolving. New income, sales, use, value-added or other tax laws, statutes, rules, regulations, or ordinances could be enacted at any time (possibly with retroactive effect), and could be applied solely or disproportionately to services provided over the internet or could otherwise materially affect our financial position and results of operations.
In addition, state, local and foreign tax jurisdictions have differing rules and regulations governing sales, use, value-added and other taxes, and these rules and regulations can be complex and are subject to varying interpretations that may change over time. Existing tax laws, statutes, rules, regulations, or ordinances could be interpreted, changed, modified, or applied adversely to us (possibly with retroactive effect). We have not collected sales taxes in all jurisdictions in which we have made sales to our clients, and we believe we may have exposure for potential sales tax liability, including interest and penalties, for which we have established a reserve in our financial statements, and any sales tax exposure may be material to our operating results. Although our client contracts typically provide that our clients must pay all applicable sales and similar taxes, our clients may be reluctant to pay back taxes and associated interest or penalties, or we may determine that it would not be commercially feasible to seek reimbursement. In addition, we or our clients could be required to pay additional tax amounts on both future as well as prior sales, and possibly fines or penalties and interest for past due taxes. If we are required to collect and pay back taxes and associated interest and penalties, and if the amount we are required to collect and pay exceeds our estimates and reserves, or if we are unsuccessful in collecting such amounts from our clients, we could incur potentially substantial unplanned expenses, thereby adversely impacting our operating results and cash flows. Impostion of such taxes on our services going forward or collection of sales tax from our clients in respect of prior sales could also adversely affect our sales activity and have a negative impact on our operating results and cash flows.

One or more states may seek to impose incremental or new sales, use, value added or other tax collection obligations on us, including for past sales by us or our resellers and other partners. A successful assertion by a state, country or other jurisdiction that we should have been or should be collecting additional sales, use, value added or other taxes on our solutions could, among other things, result in substantial tax liabilities for past sales, create significant administrative burdens for us, discourage users from utilizing our solutions or otherwise harm our business, results of operations, and financial condition.

We recently implemented a new enterprise resource planning system, and if this new system proves ineffective or if we experience issues with the transition, we may be unable to timely or accurately prepare financial reports, make payments to our suppliers and employees, or invoice and collect from our users.

In 2017, we implemented a new enterprise resource planning, or ERP, system, including our systems for tracking revenue recognition. Our ERP system is critical to our ability to accurately maintain books and records and to prepare our financial statements. The transition to our new ERP system may be disruptive to our business if the ERP system does not work as planned or if we experience issues relating to the implementation. Such disruptions could impact our ability to timely or accurately make payments to our suppliers and employees, and could also inhibit our ability to invoice and collect from our users. Data integrity problems or other issues may be discovered which, if not corrected, could impact our business or financial results. In addition, we may experience periodic or prolonged disruption of our financial functions arising out of this conversion, general use of such system, other periodic upgrades or updates, or other external factors that are outside of our control. If we encounter unforeseen problems with our ERP system or other related systems and infrastructure, our business, results of operations, and financial condition could be adversely affected.

Our business could be disrupted by catastrophic events and man-made problems, such as power disruptions, data security breaches, and terrorism.

Our systems are vulnerable to damage or interruption from the occurrence of any catastrophic event, including earthquake, fire, flood, tsunami, or other weather event, power loss, telecommunications failure, software or hardware malfunction, cyber-attack, war, terrorist attack, or incident of mass violence, which could result in lengthy interruptions in access to our platform. In particular, certain of the facilities we lease to house our computer and telecommunications equipment are located in the San Francisco Bay Area, a region known for seismic activity, and our insurance coverage may not compensate us for losses that may occur in the event of an earthquake or other significant natural disaster. In addition, acts of terrorism, including malicious internet-based activity, could cause disruptions to the internet or the economy as a whole. Even with our disaster recovery
arrangements, access to our platform could be interrupted. If our systems were to fail or be negatively impacted as a result of a natural disaster or other event, our ability to deliver our platform and solution to our clients and members would be impaired or we could lose critical data. If we are unable to develop adequate plans to ensure that our business functions continue to operate during and after a disaster, and successfully execute on those plans in the event of a disaster or emergency, our business, financial condition, and results of operations would be harmed.

We have implemented a disaster recovery program that allows us to move website traffic to a backup data center in the event of a catastrophe. This allows us the ability to move traffic in the event of a problem, and the ability to recover in a short period of time. However, to the extent our disaster recovery program does not effectively support the movement of traffic in a timely or complete manner in the event of a catastrophe, our business and results of operations may be harmed.

We do not carry business interruption insurance sufficient to compensate us for the potentially significant losses, including the potential harm to our business, financial condition and results of operations that may result from interruptions in access to our platform as a result of system failures.

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

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

**Risks Related to Ownership of Our Common Stock and this Offering**

*There has been no prior public trading market for our common stock, and an active trading market may not develop or be sustained following this offering.*

We have applied to list our common stock on The Nasdaq Global Select Market under the symbol “LVGO.” However, prior to this offering, there has been no prior public trading market for our common stock. An active trading market for our common stock may not develop on such exchange or elsewhere or, if developed, any market may not be sustained. The initial public offering price of our common stock will be determined through negotiation between us and the underwriters. This price will not necessarily reflect the price at which investors in the market will be willing to buy and sell shares of our common stock following this offering.

In addition, the market price of our common stock following this offering is likely to be highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. Accordingly, we cannot assure you of the liquidity of an active trading market, your ability to sell your shares of our common stock when desired or the prices that you may obtain for your shares of our common stock.

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

The trading price of our common stock following this offering may fluctuate substantially and be higher or lower than the initial public offering price, depending on a number of factors, including those described in this
“Risk Factors” section, many of which are beyond our control and may not be related to our operating performance. These fluctuations could cause you to lose all or part of your investment in our common stock. Factors that could cause fluctuations in the trading price of our common stock include the following:

- price and volume fluctuations in the overall stock market from time to time;
- volatility in the market prices and trading volumes of technology and healthcare company stocks;
- changes in operating performance and stock market valuations of other technology companies generally, or those in our industry in particular;
- sales of shares of our common stock by us or our stockholders;
- failure of securities analysts to maintain coverage of us, changes in financial estimates by securities analysts who follow our company, or our failure to meet these estimates or the expectations of investors;
- the financial projections we may provide to the public, any changes in those projections, or our failure to meet those projections;
- announcements by us or our competitors of new products;
- the public’s reaction to our press releases, other public announcements, and filings with the SEC;
- changes in how clients perceive the benefits of our products and services, and future product offerings;
- changes in the structure of healthcare payment systems;
- rumors and market speculation involving us or other companies in our industry;
- actual or anticipated changes in our results of operations or fluctuations in our results of operations;
- actual or anticipated developments in our business, our competitors’ businesses, or the competitive landscape generally;
- litigation involving us, our industry or both, or investigations by regulators into our operations or those of our competitors;
- developments or disputes concerning our intellectual property or other proprietary rights;
- any significant data breach involving our products, services or site, or data stored by us or on our behalf;
- announced or completed acquisitions of businesses, commercial relationships, products, services, or technologies by us or our competitors;
- new laws or regulations or new interpretations of existing laws or regulations applicable to our business;
- changes in accounting standards, policies, guidelines, interpretations, or principles;
- “flash crashes,” “freeze flashes” or other glitches that disrupt trading on the securities exchange on which we are listed;
- any significant change in our management; and
- general economic conditions and slow or negative growth of our markets

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

Upon completion of this offering, our executive officers, directors, and holders of 5% or more of our common stock will collectively beneficially own approximately % of the outstanding shares of our common stock and continue to have substantial control over us, which will limit your ability to influence the outcome of important transactions, including a change in control.

Upon completion of this offering, our executive officers, directors and each of our stockholders who own 5% or more of our outstanding common stock and their affiliates, in the aggregate, will beneficially own approximately % of the outstanding shares of our common stock, based on the number of shares outstanding as of March 31, 2019. As a result, these stockholders, if acting together, will be able to influence or control matters requiring approval by our stockholders, including the election of directors and the approval of mergers, acquisitions or other extraordinary transactions. They may also have interests that differ from yours and may vote in a way with which you disagree and which may be adverse to your interests. This concentration of ownership may have the effect of delaying, preventing or deterring a change in control of our company, could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of our company and might ultimately affect the market price of our common stock.

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

Sales of a substantial number of shares of our common stock in the public market after this offering, or the perception that such sales could occur, could adversely affect the market price of our common stock and may make it more difficult for you to sell your common stock at a time and price that you deem appropriate. Based on the total number of outstanding shares of our capital stock as of March 31, 2019, upon completion of this offering, we will have approximately shares of capital stock outstanding, assuming no exercise by the underwriters of their over-allotment option. All of the shares of common stock sold in this offering will be freely tradable without restrictions or further registration under the Securities Act, except for any shares held by our “affiliates” as defined in Rule 144 under the Securities Act.

As a result of these agreements and the provisions of our investors’ rights agreement described further in the section titled “Description of Capital Stock—Registration Rights,” and subject to the provisions of Rule 144 or Rule 701, shares of our common stock will be available for sale in the public market as follows:

- beginning on the date of this prospectus, all shares of our common stock sold in this offering will be immediately available for sale in the public market; and
- beginning 181 days after the date of this prospectus (subject to the terms of the lock-up agreements and market standoff agreements described above), the remainder of the shares of our common stock will be eligible for sale in the public market from time to time thereafter, subject in some cases to the volume and other restrictions of Rule 144.

Our executive officers, directors, and substantially all holders of our capital stock and securities convertible into or exchangeable for our capital stock are subject to market standoff agreements with us or have agreed or will agree to enter into lock-up agreements with the underwriters agreeing, subject to certain exceptions, not to, without the prior written consent of Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC and J.P. Morgan Securities LLC, on behalf of the underwriters, dispose of or hedge any shares or any securities convertible into or exchangeable for shares of our capital stock for a period of 180 days after the date of this prospectus. When the lock-up period in the lock-up agreements expires, our locked-up securityholders will be able to sell our shares in the public market. In addition, Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC and J.P. Morgan Securities LLC, on behalf of the underwriters, may release all or some portion of the shares subject to the lock-up.
agreements prior to the expiration of the lock-up period. See the section titled “Shares Eligible for Future Sale” for more information. Sales of a substantial number of such shares, or the perception that such sales may occur upon expiration of, or early release of the securities subject to, the lock-up agreements, could cause our stock price to fall or make it more difficult for you to sell your common stock at a time and price that you deem appropriate.

Upon completion of this offering, stockholders owning an aggregate of up to 65,285,098 shares will be entitled, under our investors’ rights agreement, to require us to register shares owned by them for public sale in the United States. In addition, we intend to file a registration statement to register shares reserved for future issuance under our equity compensation plans. Upon effectiveness of that registration statement, subject to the satisfaction of applicable exercise periods and the expiration or waiver of the market standoff agreements and lock-up agreements referred to above, the shares issued upon exercise of outstanding stock options or upon settlement of outstanding RSU awards will be available for immediate resale in the United States in the open market.

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

Because the initial public offering price of our common stock is substantially higher than the pro forma as adjusted net tangible book value per share of our outstanding common stock following this offering, new investors will experience immediate and substantial dilution in the book value of your shares.

The initial public offering price is substantially higher than the pro forma as adjusted net tangible book value per share of our common stock immediately following this offering based on the total value of our tangible assets less our total liabilities. Therefore, if you purchase shares of our common stock in this offering, based on the initial public offering price of $ per share and the issuance of shares of common stock in this offering, you will experience immediate dilution of $ per share, the difference between the price per share you pay for our common stock and its pro forma as adjusted net tangible book value per share as of March 31, 2019. Furthermore, if the underwriters exercise their over-allotment option, if outstanding stock options and RSUs are exercised or settled, if we issue awards to our employees under our equity incentive plans, or if we otherwise issue additional shares of our common stock, you could experience further dilution. See the section titled “Dilution” for additional information.

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

The trading market for our common stock depends, to some extent, on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts or the information contained in their reports. If one or more analysts publish research reports that are interpreted negatively by the investment community, or have a negative tone regarding our business, financial condition or operating performance, industry or end-markets, our share price could decline. In addition, if a majority 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 will have broad discretion in the use of the net proceeds to us from this offering and may not use them effectively.

We will have broad discretion in the application of the net proceeds to us from this offering, including for any of the purposes described in the section titled “Use of Proceeds,” and you will not have the opportunity as part of your investment decision to assess whether the net proceeds are being used appropriately. Because of the
number and variability of factors that will determine our use of the net proceeds from this offering, their ultimate use may vary substantially from their currently intended use. If we do not use the net proceeds that we receive in this offering effectively, our business, financial condition, operating results, and prospects could be harmed, and the market price of our common stock could decline. Pending their use, we may invest the net proceeds from this offering in short-term, investment-grade, interest-bearing securities such as money market accounts, certificates of deposit, commercial paper, and guaranteed obligations of the U.S. government that may not generate a high yield for our stockholders. These investments may not yield a favorable return to our investors.

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

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

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

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

Finally, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any “interested” stockholder for a period of three years following the date on which the stockholder became an “interested” stockholder.
Our amended and restated bylaws provide that the Court of Chancery of the State of Delaware will be the exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers, or employees.

Our amended and restated bylaws provide that the Court of Chancery of the State of Delaware is the exclusive forum for the following types of actions or proceedings under Delaware statutory or common law:

- any derivative action or proceeding brought on our behalf;
- any action asserting a breach of fiduciary duty;
- any action asserting a claim against us arising under the Delaware General Corporation Law, our amended and restated certificate of incorporation or our amended and restated bylaws; and
- any action asserting a claim against us that is governed by the internal-affairs doctrine.

This exclusive forum provision will not apply to any causes of action arising under the Securities Act or the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. These exclusive-forum provisions may limit a stockholder’s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage lawsuits against us and our directors, officers and other employees. If a court were to find either exclusive-forum provision in our amended and restated bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving the dispute in other jurisdictions, which could seriously harm our business.

Because we do not anticipate paying any cash dividends on our capital stock in the foreseeable future, capital appreciation, if any, will be your sole source of gain.

You should not rely on an investment in our common stock to provide dividend income. We have never declared nor paid any cash dividends on our capital stock. We currently intend to retain any future earnings to finance the operation and expansion of our business, and we do not expect to declare or pay any cash dividends in the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our board of directors. As a result, stockholders must rely on sales of their common stock after price appreciation as the only way to realize any future gains on their investment, if any.

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

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

We could be subject to securities class action litigation.

In the past, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk is especially relevant for us, because technology companies have experienced significant stock price volatility in recent years. If we face such litigation, it could result in substantial costs and a diversion of management’s attention and resources, which could harm our business.
This prospectus contains forward-looking statements within the meaning of the federal securities laws, which statements involve substantial risks and uncertainties. Forward-looking statements generally relate to future events or our future financial or operating performance. In some cases, you can identify forward-looking statements because they contain words such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “could,” “intends,” “target,” “projects,” “contemplates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these words or other similar terms or expressions that concern our expectations, strategy, plans, or intentions. Forward-looking statements contained in this prospectus include, but are not limited to, statements about:

- our ability to retain clients and sell additional solutions to new and existing clients;
- our ability to attract and enroll new members;
- the growth and success of our partners and reseller relationships;
- our ability to estimate the size of our target market;
- uncertainty in the healthcare regulatory environment;
- our future financial performance, including trends in revenue, costs of revenue, gross profit or gross margin, operating expenses, paying users, and free cash flow;
- our ability to achieve or maintain profitability;
- the demand for our solution or for chronic condition management in general;
- our ability to compete successfully in competitive markets;
- our ability to respond to rapid technological changes;
- our expectations and management of future growth;
- our ability to develop new solutions, or enhancements to our existing solutions, and bring them to market in a timely manner;
- our ability to offer high-quality coaching and monitoring;
- our ability to attract and retain key personnel and highly qualified personnel;
- our ability to protect our brand;
- our ability to expand payor relationships;
- our ability to maintain, protect, and enhance our intellectual property;
- restrictions and penalties as a result of privacy and data protection laws;
- our ability to successfully identify, acquire, and integrate companies and assets;
- the increased expenses associated with being a public company; and
- our anticipated uses of net proceeds from this offering.

We caution you that the foregoing list may not contain all of the forward-looking statements made in this prospectus.

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

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

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this prospectus, and while we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain and investors are cautioned not to unduly rely upon these statements.
INDUSTRY AND MARKET DATA

This prospectus contains estimates and information concerning our industry, including market size of the markets in which we participate, that are based on industry publications and reports. This information involves a number of assumptions and limitations, and you are cautioned not to give undue weight to these estimates. We have not independently verified the accuracy or completeness of the data contained in these industry publications and reports. The markets in which we operate are subject to a high degree of uncertainty and risk due to a variety of factors, including those described in the section titled “Risk Factors.” These and other factors could cause results to differ materially from those expressed in these publications and reports.

The source of certain statistical data, estimates and forecasts contained in this prospectus are the following independent industry publications or reports:

- The BMJ, Association of Glycaemia with Macrovascular and Microvascular Complications of Type 2 Diabetes (UKPDS 35): Prospective Observational Study, August 2000.
- The Center for Medicare and Medicaid Services, National Health Expenditures 2017 Highlights, April 2018.
- The National Association of Chronic Disease Directors, Why We Need Public Health to Improve Healthcare. This report can be found at: https://www.chronicdisease.org/page/whyweneedph2imphc.

Information contained on or accessible through the websites referenced above are not a part of this prospectus and the inclusion of the website addresses above are inactive textual references only.
USE OF PROCEEDS

We estimate that the net proceeds to us from the sale of shares of our common stock in this offering will be approximately $\textit{X} million, or approximately $\textit{Y} million if the underwriters exercise their over-allotment option in full, based upon the assumed initial public offering price of $\textit{Z} per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

Each $1.00 increase or decrease in the assumed initial public offering price of $\textit{Z} per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase or decrease, as applicable, the net proceeds that we receive from this offering by approximately $\textit{X} million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the underwriting discounts and commissions payable by us. Similarly, each increase or decrease of 1.0 million in the number of shares of our common stock offered by us would increase or decrease, as applicable, the net proceeds that we receive from this offering by approximately $\textit{X} million, assuming the assumed initial public offering price remains the same and after deducting the underwriting discounts and commissions payable by us. We do not expect that a change in the initial price to the public or the number of shares by these amounts would have a material effect on the uses of the proceeds from this offering, although it may accelerate the time at which we will need to seek additional capital.

The principal purposes of this offering are to increase our capitalization and financial flexibility, create a public market for our common stock and enable access to the public equity markets for us and our stockholders.

We intend to use the net proceeds from this offering for general corporate purposes, including working capital, operating expenses, and capital expenditures. We may use a portion of the net proceeds we receive from this offering to acquire businesses, products, services, or technologies. However, we do not have agreements or commitments for any material acquisitions at this time. We have not allocated specific amounts of net proceeds for any of these purposes.

The expected use of net proceeds from this offering represents our intentions based upon our present plans and business conditions. We cannot specify with certainty the particular uses of the net proceeds that we will receive from this offering. Accordingly, we will have broad discretion in using these proceeds. Pending the use of proceeds from this offering as described above, we may invest the net proceeds that we receive in this offering in short-term, investment grade, interest-bearing instruments, including government and investment-grade debt securities, certificates of deposit, commercial paper and money-market funds.
DIVIDEND POLICY

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain any future earnings and do not expect to pay any dividends in the foreseeable future. Any future determination to declare cash dividends will be made at the discretion of our board of directors, subject to applicable laws, and will depend on a number of factors, including our financial condition, results of operations, capital requirements, contractual restrictions, general business conditions, and other factors that our board of directors may deem relevant.
CAPITALIZATION

The following table sets forth cash and cash equivalents, as well as our capitalization, as of March 31, 2019 as follows:

- on an actual basis;
- on a pro forma basis, giving effect to (i) the automatic conversion of 58,615,488 shares of our redeemable convertible preferred stock outstanding as of March 31, 2019 into an equivalent number of shares of our common stock as if such conversion had occurred on March 31, 2019, which will occur immediately prior to the completion of this offering, (ii) stock-based compensation expense of $3.4 million related to RSUs subject to service-based and performance-based vesting conditions, which we will recognize upon the completion of this offering, as further described in Note 2 to our consolidated financial statements included elsewhere in this prospectus, and (iii) the filing and effectiveness of our amended and restated certificate of incorporation in Delaware, which will be in effect immediately prior to the completion of this offering; and
- on a pro forma as adjusted basis, giving effect to (i) the pro forma adjustments set forth above, and (ii) the sale and issuance by us of shares of our common stock in this offering, based upon the assumed initial public offering price of $\text{per share}, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

The pro forma as adjusted information set forth in the table below is illustrative only and will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing. You should read this table together with our consolidated financial statements and the related notes thereto that are included elsewhere in this prospectus, and the sections titled “Selected Consolidated Financial and Other Data” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

<table>
<thead>
<tr>
<th>As of March 31, 2019</th>
<th>Actual</th>
<th>Pro Forma</th>
<th>Pro Forma As Adjusted(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands, except share and per share data)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$54,996</td>
<td>$54,996</td>
<td></td>
</tr>
<tr>
<td>Redeemable convertible preferred stock, par value of $0.001 per share; 58,615,488 shares authorized, 58,615,488 shares issued and outstanding, actual; no shares authorized, issued and outstanding, pro forma and pro forma as adjusted</td>
<td>236,970</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Stockholders’ (deficit) equity:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preferred stock, par value $0.001 per share; no shares authorized, issued, and outstanding, actual; 100,000,000 shares authorized, no shares issued and outstanding, pro forma and pro forma as adjusted</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Common stock, par value $0.001 per share; 101,750,000 shares authorized, 19,617,923 shares issued and outstanding, actual; 900,000,000 shares authorized, pro forma and pro forma as adjusted, 78,233,411 shares issued and outstanding, pro forma, and shares issued and outstanding, pro forma as adjusted</td>
<td>20</td>
<td>78</td>
<td></td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>27,586</td>
<td>267,875</td>
<td></td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(128,573)</td>
<td>(131,950)</td>
<td></td>
</tr>
<tr>
<td>Total stockholders’ (deficit) equity</td>
<td>(100,967)</td>
<td>136,003</td>
<td></td>
</tr>
<tr>
<td>Total capitalization</td>
<td>$136,003</td>
<td>$136,003</td>
<td></td>
</tr>
</tbody>
</table>

(1) Each $1.00 increase or decrease in the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase or decrease, as applicable, each of our cash and cash equivalents.
equivalents, additional paid-in capital, total stockholders’ equity, and total capitalization by $\text{money},$ assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the underwriting discounts and commissions payable by us. Similarly, each increase or decrease of 1.0 million shares in the number of shares of our common stock offered by us would increase or decrease, as applicable, each of our pro forma as adjusted cash and cash equivalents, additional paid-in capital, total stockholders’ equity and total capitalization by $\text{money}$, assuming the assumed initial public offering price per share remains the same, and after deducting the underwriting discounts and commissions payable by us.

If the underwriters exercise their over-allotment option in full, our pro forma as adjusted cash and cash equivalents, additional paid-in capital, total stockholders’ equity, total capitalization, and shares outstanding as of March 31, 2019 would be $\text{money}$, $\text{money}$, $\text{money}$, $\text{money}$, and $\text{shares}$, respectively.

The number of shares of our common stock issued and outstanding, pro forma and pro forma as adjusted, in the table above is based on 78,233,411 shares of our common stock (including shares of our redeemable convertible preferred stock on an as-converted basis) outstanding as of March 31, 2019, and excludes:

• 16,739,586 shares of our common stock issuable upon the exercise of options to purchase shares of our common stock that were outstanding as of March 31, 2019 under our 2008 Plan and our 2014 Plan, with a weighted-average exercise price of $1.80 per share;

• 3,690,243 shares of our common stock subject to RSUs outstanding as of March 31, 2019 under our 2014 Plan;

• 785,000 shares of our common stock issuable upon the exercise of warrants outstanding as of March 31, 2019 to purchase shares of our common stock, with a weighted-average exercise price of $2.09 per share;

• 1,340,200 shares of our common stock issuable upon the vesting of RSUs granted after March 31, 2019; and

• shares of our common stock reserved for future issuance under our equity compensation plans, consisting of:

  • shares of our common stock to be reserved for future issuance under our 2019 Plan, which will become effective on the business day immediately prior to the effective date of the registration statement of which this prospectus forms a part,

  • shares of our common stock reserved for future issuance under our 2014 Plan, which number of shares will be added to the shares of our common stock to be reserved for future issuance under our 2019 Plan upon its effectiveness, and

  • shares of our common stock to be reserved for future issuance under our ESPP, which will become effective on the business day immediately prior to the effective date of the registration statement of which this prospectus forms a part.

Our 2019 Plan and ESPP each provide for annual automatic increases in the number of shares of our common stock reserved thereunder, and our 2019 Plan also provides for increases to the number of shares of our common stock that may be granted thereunder based on shares under our 2008 Plan and 2014 Plan that expire, are forfeited, or otherwise repurchased by us, as more fully described in the section titled “Executive Compensation—Employee Benefits and Stock Plans.”
If you invest in our common stock in this offering, your ownership interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock immediately after this offering.

Our historical net tangible book deficit as of March 31, 2019 was $169.7 million, or $8.65 per share. Our historical net tangible book deficit per share is determined by dividing our total tangible assets less our total liabilities by the number of shares of our common stock outstanding as of March 31, 2019. Net tangible book value dilution per share to new investors represents the difference between the amount per share paid by purchasers of shares of our common stock in this offering and the pro forma as adjusted net tangible book value per share of common stock immediately after completion of this offering.

Our pro forma net tangible book value as of March 31, 2019 was $67.3 million, or $0.86 per share. Pro forma net tangible book value per share represents our total tangible assets less our total liabilities, divided by the number of shares of our common stock outstanding as of March 31, 2019, after giving effect to the automatic conversion of 58,615,488 shares of our redeemable convertible preferred stock outstanding as of March 31, 2019 into an equivalent number of shares of common stock as if such conversion had occurred on March 31, 2019.

Our pro forma as adjusted net tangible book value represents our pro forma net tangible book value, plus the effect of the sale of shares of common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. We determine dilution per share to investors participating in this offering by subtracting pro forma as adjusted net tangible book value per share after this offering from the assumed initial public offering price per share paid by investors participating in this offering.

The following table illustrates this dilution on a per share basis to new investors:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assumed initial public offering price per share</td>
<td>$</td>
</tr>
<tr>
<td>Historical net tangible book deficit per share as of March 31, 2019</td>
<td>$(8.65)</td>
</tr>
<tr>
<td>Pro forma increase in historical net tangible book value per share as of March 31, 2019</td>
<td>9.51</td>
</tr>
<tr>
<td>Pro forma net tangible book value per share as of March 31, 2019</td>
<td>$0.86</td>
</tr>
<tr>
<td>Increase in pro forma net tangible book value per share attributable to new investors purchasing shares of our common stock in this offering</td>
<td></td>
</tr>
<tr>
<td>Pro forma as adjusted net tangible book value per share immediately after this offering</td>
<td></td>
</tr>
<tr>
<td>Dilution in pro forma net tangible book value per share to new investors in this offering</td>
<td>$</td>
</tr>
</tbody>
</table>

The pro forma as adjusted dilution information discussed above is illustrative only and will change based on the actual initial public offering price and other terms of this offering determined at pricing. Each $1.00 increase or decrease in the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase or decrease, as applicable, our pro forma as adjusted net tangible book value per share to new investors by $ , and would increase or decrease, as applicable, dilution per share to new investors purchasing shares of our common stock in this offering by $ , assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase or decrease of 1.0 million shares in the number of shares of our common stock offered by us would increase or decrease, as applicable, our pro forma as adjusted net tangible book value by $ per share and increase or decrease, as applicable, the dilution to
new investors purchasing shares of our common stock in this offering by $\_\_\_\_\_ per share, assuming the assumed initial public offering price remains the same, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their over-allotment option in full, the pro forma as adjusted net tangible book value per share of our common stock, as adjusted to give effect to this offering, would be $\_\_\_\_\_ per share, and the dilution in pro forma net tangible book value per share to new investors purchasing shares of our common stock in this offering would be $\_\_\_\_\_ per share.

The following table presents as of March 31, 2019, the differences between the existing stockholders and the new investors purchasing shares of our common stock in this offering with respect to the number of shares purchased from us, the total consideration paid or to be paid to us, which includes net proceeds received from the issuance of our common stock, cash received from the exercise of stock options, and the average price per share paid or to be paid to us at the assumed initial public offering price of $\_\_\_\_\_ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, before deducting underwriting discounts and commissions and estimated offering expenses payable by us:

<table>
<thead>
<tr>
<th>Shares Purchased</th>
<th>Total Consideration</th>
<th>Weighted-Average Price per Share</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percent</td>
</tr>
<tr>
<td>Existing stockholders</td>
<td>78,233</td>
<td>%</td>
</tr>
<tr>
<td>New investors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>$</td>
</tr>
</tbody>
</table>

If the underwriters exercise their over-allotment option in full, the number of shares held by the existing stockholders after this offering would be reduced to \% of the total number of shares of our common stock outstanding after this offering, and the number of shares held by new investors would increase to \% of the total number of shares of our common stock outstanding after this offering.

Each $1.00 increase or decrease in the assumed initial public offering price of $\_\_\_\_\_ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase or decrease, as applicable, the total consideration paid by new investors and total consideration paid by all stockholders by approximately $\_\_\_\_\_ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase or decrease of 1.0 million in the number of shares of our common stock offered by us would increase or decrease, as applicable, the total consideration paid by new investors and total consideration paid by all stockholders by approximately $\_\_\_\_\_ million, assuming the assumed initial public offering price remains the same and after deducting the underwriting discounts and commissions payable by us.

Except as otherwise indicated, the above discussion and tables assume no exercise of the underwriters’ over-allotment option. If the underwriters exercise their over-allotment option in full, our existing stockholders would own \% and our new investors would own \% of the total number of shares of our common stock outstanding upon completion of this offering.

The foregoing tables and calculations (other than the historical net tangible book value calculations) are based on 78,233,411 shares of our common stock (including shares of our redeemable convertible preferred stock on an as-converted basis) outstanding as March 31, 2019, and exclude:

- 16,739,586 shares of our common stock issuable upon the exercise of options to purchase shares of our common stock that were outstanding as of March 31, 2019 under our 2008 Plan, and our 2014 Plan, with a weighted-average exercise price of $1.80 per share;
• 3,690,243 shares of our common stock subject to RSUs outstanding as of March 31, 2019 under our 2014 Plan;

• 785,000 shares of our common stock issuable upon the exercise of warrants outstanding as of March 31, 2019 to purchase shares of our common stock, with a weighted-average exercise price of $2.09 per share;

• 1,340,200 shares of our common stock issuable upon the vesting of RSUs granted after March 31, 2019; and

• shares of our common stock reserved for future issuance under our equity compensation plans, consisting of:
  • shares of our common stock to be reserved for future issuance under our 2019 Plan, which will become effective on the business day immediately prior to the effective date of the registration statement of which the prospectus forms a part,
  • shares of our common stock reserved for future issuance under our 2014 Plan, which number of shares will be added to the shares of our common stock to be reserved for future issuance under our 2019 Plan upon its effectiveness, and
  • shares of our common stock to be reserved for future issuance under our ESPP, which will become effective on the business day immediately prior to the effective date of the registration statement of which the prospectus forms a part.

Our 2019 Plan and ESPP each provide for annual automatic increases in the number of shares of our common stock reserved thereunder, and our 2019 Plan also provides for increases to the number of shares of our common stock that may be granted thereunder based on shares under our 2008 Plan and 2014 Plan that expire, are forfeited, or otherwise repurchased by us, as more fully described in the section titled “Executive Compensation—Employee Benefits and Stock Plans.”

To the extent that any outstanding options to purchase our common stock are exercised, RSUs are settled, new awards are granted under our equity compensation plans, or we issue any securities or convertible debt in the future, there will be further dilution to investors participating in this offering.
The following selected consolidated financial and other data should be read in conjunction with “Management's Discussion and Analysis of Financial Condition and Results of Operations” and the consolidated financial statements and the related notes thereto included elsewhere in this prospectus. The consolidated statements of operations data for the years ended December 31, 2017 and 2018 and the consolidated balance sheet data as of December 31, 2017 and 2018 (except for the pro forma information) have been derived from our audited consolidated financial statements that are included elsewhere in this prospectus. The consolidated statements of operations data for the three months ended March 31, 2018 and 2019 and the consolidated balance sheet data as of March 31, 2019 are derived from our unaudited consolidated financial statements that are included elsewhere in this prospectus. The unaudited selected consolidated financial data set forth below have been prepared on the same basis as our audited consolidated financial statements and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments, that are necessary for the fair statement of such data. Our historical results are not necessarily indicative of the results that may be expected in the future, and the results for any quarter are not necessarily indicative of results to be expected for a full year or any other period. The selected consolidated financial and other data in this section are not intended to replace the consolidated financial statements and the related notes thereto included elsewhere in this prospectus and are qualified in their entirety by the consolidated financial statements and the related notes thereto included elsewhere in this prospectus.

### Selected Consolidated Financial and Other Data

<table>
<thead>
<tr>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands, except per share data)</td>
<td></td>
<td>(in thousands, except per share data)</td>
<td></td>
<td>(in thousands, except per share data)</td>
<td></td>
<td>(in thousands, except per share data)</td>
<td></td>
</tr>
<tr>
<td><strong>Consolidated Statements of Operations Data:</strong></td>
<td></td>
<td></td>
<td><strong>Consolidated Statements of Operations Data:</strong></td>
<td></td>
<td></td>
<td><strong>Consolidated Statements of Operations Data:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenue</td>
<td>$30,850</td>
<td>$68,431</td>
<td>$12,462</td>
<td>$32,061</td>
<td>$10,140</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of revenue(1)(2)</td>
<td>8,312</td>
<td>20,269</td>
<td>3,104</td>
<td>10,140</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gross profit</td>
<td>22,538</td>
<td>48,162</td>
<td>9,358</td>
<td>21,921</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td></td>
<td></td>
<td><strong>Operating expenses:</strong></td>
<td></td>
<td></td>
<td><strong>Operating expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development(1)</td>
<td>12,028</td>
<td>24,861</td>
<td>4,148</td>
<td>8,994</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and marketing(1)(2)</td>
<td>16,502</td>
<td>36,433</td>
<td>5,611</td>
<td>14,949</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General and administrative(1)(3)</td>
<td>11,050</td>
<td>23,063</td>
<td>3,943</td>
<td>14,114</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Change in fair value of contingent consideration</td>
<td>—</td>
<td>(1,200)</td>
<td>—</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>39,580</td>
<td>83,157</td>
<td>13,702</td>
<td>38,731</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loss before operations</td>
<td>(17,042)</td>
<td>(34,995)</td>
<td>(4,344)</td>
<td>(16,810)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other income, net</td>
<td>123</td>
<td>1,641</td>
<td>136</td>
<td>462</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loss before provision for income taxes</td>
<td>(16,919)</td>
<td>(33,354)</td>
<td>(4,208)</td>
<td>(16,348)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provision for (benefit from) income taxes</td>
<td>(61)</td>
<td>28</td>
<td>7</td>
<td>(1,388)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$(16,858)</td>
<td>$(33,382)</td>
<td>$(4,215)</td>
<td>$(14,960)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accretion of redeemable convertible preferred stock</td>
<td>(143)</td>
<td>(162)</td>
<td>(37)</td>
<td>(41)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net loss attributable to common stockholders</strong></td>
<td>$(17,001)</td>
<td>$(33,544)</td>
<td>$(4,252)</td>
<td>$(15,001)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss per share attributable to common stockholders, basic and diluted(4)</td>
<td>$(1.18)</td>
<td>$(2.02)</td>
<td>$(0.26)</td>
<td>$(0.82)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted(4)</td>
<td>14,442</td>
<td>16,573</td>
<td>16,206</td>
<td>18,207</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pro forma net loss per share attributable to common stockholders, basic and diluted(4)</td>
<td>$(0.47)</td>
<td></td>
<td></td>
<td>$(0.19)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weighted-average shares used in computing pro forma net loss per share attributable to common stockholders, basic and diluted(4)</td>
<td>71,757</td>
<td></td>
<td></td>
<td>76,878</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(1) Includes stock-based compensation expense as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31, 2017</th>
<th>2018</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>$ —</td>
<td>$ 18</td>
<td>$ 1</td>
<td>$ 6</td>
</tr>
<tr>
<td>Research and development</td>
<td>541</td>
<td>2,188</td>
<td>262</td>
<td>361</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>413</td>
<td>916</td>
<td>122</td>
<td>219</td>
</tr>
<tr>
<td>General and administrative</td>
<td>1,164</td>
<td>3,210</td>
<td>354</td>
<td>4,924</td>
</tr>
<tr>
<td>Total stock-based compensation expense</td>
<td>$ 2,118</td>
<td>$ 6,332</td>
<td>$ 739</td>
<td>$ 5,510</td>
</tr>
</tbody>
</table>

(2) Includes amortization of intangible assets as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31, 2017</th>
<th>2018</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>$ 12</td>
<td>$ 320</td>
<td>$ 9</td>
<td>$ 327</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>—</td>
<td>272</td>
<td>—</td>
<td>237</td>
</tr>
<tr>
<td>Total amortization of intangible assets</td>
<td>$ 12</td>
<td>$ 592</td>
<td>$ 9</td>
<td>$ 564</td>
</tr>
</tbody>
</table>

(3) Includes acquisition-related expenses as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31, 2017</th>
<th>2018</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General and administrative</td>
<td>$ 452</td>
<td>$ 354</td>
<td>$ 196</td>
<td>$ 207</td>
</tr>
<tr>
<td>Total acquisition-related expenses</td>
<td>$ 452</td>
<td>$ 354</td>
<td>$ 196</td>
<td>$ 207</td>
</tr>
</tbody>
</table>

(4) See Notes 2 and 12 to our consolidated financial statements elsewhere in this prospectus for an explanation of the method used to calculate our basic and diluted net loss per share attributable to common stockholders, our basic and diluted pro forma net loss per share and the weighted-average number of shares used in the computation of the per share amounts.

Consolidated Balance Sheet Data:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31, 2017</th>
<th>2018</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 61,243</td>
<td>$ 108,928</td>
<td>$ 54,996</td>
<td></td>
</tr>
<tr>
<td>Working capital</td>
<td>63,325</td>
<td>121,006</td>
<td>74,085</td>
<td></td>
</tr>
<tr>
<td>Total assets</td>
<td>82,045</td>
<td>180,253</td>
<td>181,837</td>
<td></td>
</tr>
<tr>
<td>Deferred revenue, current and noncurrent</td>
<td>1,244</td>
<td>2,051</td>
<td>3,526</td>
<td></td>
</tr>
<tr>
<td>Redeemable convertible preferred stock</td>
<td>132,017</td>
<td>236,929</td>
<td>236,970</td>
<td></td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(80,231)</td>
<td>(113,613)</td>
<td>(128,573)</td>
<td></td>
</tr>
<tr>
<td>Total stockholders’ deficit</td>
<td>(66,408)</td>
<td>(91,806)</td>
<td>(100,967)</td>
<td></td>
</tr>
</tbody>
</table>
Key Metrics

To analyze our business performance, determine financial forecasts, and help develop long-term strategic plans, we review the following key metrics:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>(dollars in thousands)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clients</td>
<td>218</td>
<td>413</td>
</tr>
<tr>
<td>Enrolled diabetes members</td>
<td>53,858</td>
<td>113,854</td>
</tr>
<tr>
<td>Total contract value</td>
<td>$ 77,158</td>
<td>$ 154,468</td>
</tr>
</tbody>
</table>

Clients. We define our clients as business entities that have at least one active paid contract with us at the end of a particular period. Entities that access our platform through our channel partners, PBMs, and resellers are counted as individual clients. We do not count our channel partners, PBMs, or resellers as clients, unless they also separately have active paid contracts for our solutions. If business units or subsidiaries of the same entity enter into separate agreements with us, they are counted as separate clients. However, entities that have purchased multiple solutions through different contracts are treated as a single client.

Enrolled Diabetes Members. We define our enrolled diabetes members as all employees and dependents that are enrolled in Livongo for Diabetes at the end of a given period. This number excludes: (i) employees or dependents of a client that has ceased using our solution, (ii) employees who no longer have an employment relationship with an active client, and their dependents, and (iii) employees and dependents who have not been active on or used our solution for a period of time as specified in the applicable client’s agreement, which is typically between four and six months.

Total Contract Value. We define total contract value as contractually committed orders to be invoiced under agreements initially entered into during the relevant period. Agreements are only counted in total contract value in the period in which they are entered into, and for purposes of this calculation, we assume an average member enrollment rate. While some of our agreements include clauses providing for termination at the convenience of the client, when evaluating total contract value, we assume an agreement will be serviced for the full term. Until such time as these amounts are invoiced, which occurs at the end of each month of service, they are not recorded in revenue, deferred revenue, or elsewhere in our consolidated financial statements. Total contract value only includes agreements entered into with new clients or renewals entered into with existing clients; it does not include increases to enrolled members during the original term of the contract.

See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Overview—Key Metrics,” for additional information.

Non-GAAP Financial Measures

We believe that, in addition to our financial results determined in accordance with GAAP, adjusted gross profit, adjusted gross margin, and adjusted EBITDA, all of which are non-GAAP financial measures, are useful in evaluating our business, results of operations, and financial condition.

Adjusted Gross Profit and Adjusted Gross Margin

We define adjusted gross profit as GAAP gross profit, excluding stock-based compensation expense and amortization of intangible assets. We define adjusted gross margin as our adjusted gross profit divided by our revenue.
Adjusted EBITDA

We calculate adjusted EBITDA as net loss adjusted to exclude (i) depreciation and amortization, (ii) amortization of intangible assets, (iii) stock-based compensation expense, (iv) acquisition-related expenses, (v) other income, net, (vi) change in fair value of contingent consideration, and (vii) provision for (benefit from) income taxes.

Adjusted gross profit, adjusted gross margin, and adjusted EBITDA are presented for supplemental informational purposes only and should not be considered a substitute for financial information presented in accordance with GAAP. We have included these non-GAAP financial measures because they are key measures used by our management to evaluate our operating performance. Accordingly, we believe that these non-GAAP financial measures provide useful information to investors and others in understanding and evaluating our operating result in the same manner as our management team and board of directors. Our calculation of these non-GAAP financial measures may differ from similarly-titled non-GAAP measures, if any, reported by our peer companies. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Non-GAAP Financial Measures” for explanations of how we calculated these measures and for reconciliations to the most directly comparable GAAP financial measures.
Overview

Our mission is to empower people with chronic conditions to live better and healthier lives. The advancement of technology and data science has transformed nearly every industry except healthcare to create new, consumer-first experiences that are both personalized and empowering. Livongo is pioneering a new category in healthcare, called Applied Health Signals, which is transforming the management of chronic conditions.

In 2014, 147 million adults in the United States had a chronic condition and over 40% had two or more chronic conditions. However, the current U.S. healthcare system is not designed to continually care for people with chronic conditions. People are left to manage these conditions on their own with limited guidance. While new digital health devices may assist with tracking and gathering data on their condition, they fail to provide actionable feedback. As a result of receiving ineffective care, many people are unhappy, feel alone and disconnected, and are not getting healthier, resulting in higher costs for employers, people with chronic conditions and the people who pay for their care.

Enter Livongo. Our platform, which leverages data science and technology, creates a new kind of personalized experience for people with chronic conditions (our members). This empowers our members to make sustainable behavior changes that lead to better outcomes and lower costs. The Livongo experience makes it easier for our members to stay healthy. We fit into the way our members live, put them in control of managing their condition, and give them an experience that they don’t just like, but love (evidenced by our average member NPS of +64). And because they love the solution, they keep using it, driving high retention and sustained usage, improved health results and bottom line savings, all of which are important to our clients, who pay us a monthly subscription on behalf of our members. A solution our members love, improved health results that are measurable and sustainable, and lower costs. That’s revolutionary in healthcare.

Since our launch, we have achieved the following significant milestones:

• In September 2014, we launched our first solution, Livongo for Diabetes.
• In April 2018, we acquired Retrofit Inc., which marked the launch of our second solution which is now known as Livongo for Prediabetes and Weight Management.
• In August 2018, we launched our third solution, Livongo for Hypertension.
• In February 2019, we acquired myStrength, Inc., which marked the launch of our fourth solution which is now known as Livongo for Behavioral Health by myStrength.
We currently offer the following solutions:

- **Livongo for Diabetes**: This solution has historically accounted for a substantial portion of our revenue, and we expect that to continue for the next several years. Livongo for Diabetes offers our members a cellular-connected interactive blood glucose meter, unlimited blood glucose test strips, personalized Health Nudges to support behavior change, digital tools across mobile, web, and email, as well as coaching. Additionally, we offer 24x7x365 monitoring, whereby members who have dangerously low or high blood glucose receive a call from one of our in-house Certified Diabetes Educators within a few minutes, no matter where they are in the world.

- **Livongo for Hypertension**: Members receive a connected blood pressure monitor and cuff which is wireless and transmits data after each measurement to our mobile app. Members are able to review results, get Health Nudges for managing their blood pressure by reminding them to take their medication, follow a healthy eating pattern, be more physically active, and receive coaching and monitoring. Members have access to the same digital toolkit and expert coaching that is available to them through Livongo for Diabetes.

- **Livongo for Prediabetes and Weight Management**: Members who are at risk for developing diabetes or are overweight are offered a combination of a cellular-connected weight scale, a rich mobile experience that includes health education curricula and content, personalized coaching by registered dieticians and exercise physiologists, group classes, and online communities to encourage healthy eating and exercise habits.

- **Livongo for Behavioral Health by myStrength**: This solution uses a digital approach to delivering evidence-based interventions including cognitive behavioral therapy, acceptance and commitment therapy, positive psychology, mindfulness, and motivational interviewing to help resolve clinical conditions, build resiliency, manage stress, improve mood, sleep better, or simply find daily inspiration. In February 2019, we acquired myStrength and are in the process of integrating the myStrength solution into our solution suite.
Our solutions include a smart, cellular-connected device and related testing materials, if applicable, that are sent directly to the member, and member access to a suite of personalized feedback and remote monitoring and coaching services on our platform. We invoice our clients monthly on a per-member or per-solution basis, depending on the solution, and may also charge an upfront fee for the devices. We do not sell member support services separately. As a result, member enrollment and continued usage drives our revenue. We primarily generate revenue not through the upfront fee for our devices, but from the ongoing subscription revenue for our members to access to our platform.

Our business is based on a recurring revenue model, with our agreements having fixed and variable pricing components based on the number of members. This results in a highly predictable revenue stream, which helps us plan for growth and scale. Our retention rate for clients who have been with us since December 31, 2017 was 95.9%. Furthermore, over time, many of our clients make our solutions available to a greater percentage of their employee population, allowing us to both increase enrollment within our existing clients, which we refer to as product intensity, and for the sale of additional solutions to existing clients, which we refer to as product density. For example, among clients who had an agreement with us in the year ended December 31, 2017, we saw strong retention and increase in our relationship, as demonstrated by our dollar-based net expansion rate of 113.8% for the year ended December 31, 2018. For information on how our dollar-based net expansion rate is calculated, see “—Factors Affecting Our Performance—Product Intensity and Enrollment Impacts our Performance” below. We also closely measure member retention, and our average monthly member churn for 2018 was approximately 2%. We calculate our monthly member churn by looking at the members who were with us at the beginning of each monthly period and then subtracting the number of those members still on our solution at the end of each monthly period and dividing that number by the starting member number for that monthly period. To get our average annual monthly member churn, we take the average of all twelve months of churn.

We sell our solutions through agreements with our clients that are typically one to three years in length. We maintain a direct sales team which assists potential enterprise clients in understanding the benefits of our solutions. Once our direct sales team has engaged a prospective client, they then identify a channel for the client to subscribe through to purchase our services. Our direct sales team and channel partner, PBM, and reseller relationships greatly increase our visibility to clients, and we have a number of distribution channels through which we may engage with new clients. Our sales team assists with initial subscriptions by new clients, and our member services team drives additional revenue within existing clients. Our clients then make our solutions available to our potential targeted members. Our member acquisition team assists with both product intensity by driving increased enrollment within our existing clients, and product density by selling additional solutions to existing clients, expanding the value we provide to our clients and their members. Our channel partners, PBMs and resellers have a commercial relationship with our clients. Pursuant to our agreements, they receive an administrative or a marketing fee for their services, and we engage directly with our clients with respect to the provision of our services. Our member acquisition team works directly with clients to ensure rapid onboarding and easy enrollment for new members using an integrated marketing campaign.

We sell to companies of all sizes, including employers, from small businesses to Fortune 500 enterprises, hospital payors, government entities, and labor unions. We currently derive a high concentration of our revenue from sales to clients that are self-insured employers, with hospital payors, government entities, and labor unions accounting for a smaller portion of our revenue. As of December 31, 2017, December 31, 2018, and March 31, 2019, we served 218, 413, and 679 clients, respectively. Our solutions appeal to a broad cross-section of sectors, and our current clients represent over 20% of the 2018 Fortune 500 Companies. Our representative clients that generated more than $100,000 in revenue in 2018 include AECOM Technology Corporation, American Foreign Service Protective Association, the Board of Pensions of Presbyterian Church U.S.A., Citigroup Inc., Compass Group USA, Cox Enterprises, Inc., Dean Foods Company, Delta Air Lines, Inc., Fortune Brands Home & Security, Inc., the Harris Health System, Hyatt Hotels Corporation, Thomas Jefferson University Hospitals Inc., Lowe’s Companies, Inc., Merck & Co., Inc., Microsoft Corporation, Michigan State University, PepsiCo, Inc., SAP SE, Target Corporation, UMass Memorial Health Care, US Foods Holding Corp., and WEA Insurance Corporation. Our clients also include five of the seven largest health plans and two leading PBMs. We define
clients as business entities that have at least one active paid contract with us at the end of a particular period. Our clients make our solutions available to their employees and dependents, and we consider these direct users our members. We invoice member activity on a PPPM basis. Our channel partners include Express Scripts and CVS Health. As of December 31, 2017, December 31, 2018, and March 31, 2019, we had approximately 54,000, 114,000, and 164,000 members, respectively, enrolled in our Livongo for Diabetes solution. In addition, we have a growing number of members enrolled in our hypertension, prediabetes and weight management, and behavioral health solutions. Our client and member base is located in the United States.

We have experienced significant growth since our inception. Our revenue was $30.9 million and $68.4 million for the years ended December 31, 2017 and 2018, respectively, representing a year-over-year growth rate of 122%. Our revenue increased from $12.5 million for the three months ended March 31, 2018 to $32.1 million for the three months ended March 31, 2019, representing a year-over-year growth rate of 157%. We have made significant investments to grow our business, particularly in research and development and sales and marketing. As a result, we have incurred net losses of $16.9 million and $33.4 million for the years ended December 31, 2017 and 2018, respectively. Our net loss increased from $4.2 million for the three months ended March 31, 2018 to $15.0 million for the three months ended March 31, 2019. As of March 31, 2019, we had an accumulated deficit of $128.6 million.

Factors Affecting Our Performance

New Client Acquisition. We believe there are significant opportunities for growth as enterprises and individuals seek better ways to manage chronic conditions. We believe our ability to add new clients is a key indicator of our increasing market adoption and future revenue potential. Our client count grew from 218 as of December 31, 2017, to 413 as of December 31, 2018, representing a year-over-year increase of 89.4%. As of March 31, 2019, we had 679 clients, including 120 clients we acquired in connection with our acquisition of myStrength, Inc., which was completed in February 2019.

Our channel partners, PBMs and resellers play an important role in marketing to and contracting with our clients. They often speed up the process of contracting and increase our access to clients. Under our agreements with our channel partners, PBMs and resellers, we are obligated to pay such third parties an administrative or a marketing fee. While these relationships carry up-front costs, they significantly expand the distribution channels through which we may capture new clients and enroll new members. Our growth and financial results will depend in part on our ability to acquire new clients, particularly as we pursue Medicare Advantage, Managed Medicare, Fee for Service Medicare, Medicaid, and other fully-insured employers. Our ability to increase our total number of clients also increases our future opportunities for product intensity through expansion of members within an existing client using a solution, renewals, and product density through sales of additional solutions for other chronic conditions.

Product Intensity and Enrollment Impacts our Performance. An important component of our revenue growth strategy is to retain our existing clients and members, as well as increase product intensity through growing member enrollment within our client base. We believe we are well-positioned to continue our relationships with existing clients due to the quality of our solutions and member satisfaction with our solutions. Members see real value in our solutions and are satisfied with our offering, which is demonstrated with our average member NPS of +64. As an example of our opportunities for further engagement with existing clients, with respect to Livongo for Diabetes, at the end of twelve months, our average enrollment rate for Livongo for Diabetes clients is 34% of total recruitable individuals at a client. The average enrollment rate after twelve months for fully optimized clients who began enrollment in 2018 is over 47%. Our top ten clients by enrollment represented 18.5% of our enrolled diabetes members and 16% of total revenue for the quarter ended March 31, 2019, demonstrating our broad, distributed client base. We work to continually improve our enrollment rate through the use of our AI=AI engine, which provides feedback on successful outreach and engagement strategies. The ability to enroll additional employees with chronic conditions represents a significant opportunity for us within our existing clients. For example, during the three months ended March 31, 2019, we added 146 new
clients and approximately 50,000 new Livongo for Diabetes members, which does not include 120 clients from our acquisition of myStrength, which was completed in February 2019. Once a client is onboarded, we leverage our AI+AI engine to target and engage with potential new members in an informed manner that drives rapid enrollment and increases our product intensity in these new clients.

We believe that our ability to grow the subscription revenue generated from our existing clients is an indicator of the long-term value of our client relationships for Livongo as a whole. We typically enjoy a high rate of client retention and expansion. We track our performance in this area by measuring our dollar-based net expansion rate, which for clients who had been clients for at least one year was 113.8% for the year ended December 31, 2018. Our dollar-based net expansion rate compares our monthly service revenue from the same set of clients across comparable periods. Our dollar-based net expansion rate equals: (1) the monthly service revenue at the end of a period for a base set of clients from which we generated monthly service revenue two years prior to the date of calculation, divided by (2) the monthly service revenue one year prior to the date of calculation for the same set of clients. Monthly service revenue is calculated as the monthly per participant rate for our Livongo for Diabetes and our Livongo for Hypertension solutions multiplied by the number of members who were active on or used our solution within a certain period of time, as specified in the applicable client’s agreement. Our dollar-based net expansion rate reflects clients who have ceased using our solution. We began tracking dollar-based net expansion rate annually in 2018. Additionally, our retention rate for clients who have been with us since December 31, 2017 was 95.9%.

Contribution Margin

We endeavor to expand our relationship with our clients over time, and the cost to maintain and renew existing clients is less than the cost to initially acquire a new client. As a result, the value of a client to our business increases over time. We believe that as our client base grows and a relatively higher percentage of our subscription revenue is attributed to renewals and upsells to existing clients versus acquisition of new clients, associated sales and marketing expenses and other allocated upfront costs will decrease as a percentage of revenue.

To further illustrate the economics of our client and member relationships, we are providing a contribution margin analysis for clients who launched enrollment during the year ended December 31, 2016, which we refer to as the 2016 Cohort. We selected the 2016 Cohort to illustrate the potential long-term value of our member base as these clients have been with us for three years, and we believe the 2016 Cohort, which is comprised of approximately 60 clients, is a fair representation of our overall client base because it includes clients across industries and segments of differing size and geography, and which were acquired as clients through various sales channels. We are only presenting annual periods within this three-year period to illustrate these economics because our agreements with our clients are typically one to three years in length.

We define contribution margin as device and subscription fees minus estimated associated costs, which are defined as follows:

Device and Subscription Fees:

Device and subscription fees for a given month for the 2016 Cohort is calculated as the product of (i) the number of all diabetes members who have enrolled in Livongo for Diabetes and have satisfied contractual billing criteria in the agreements with 2016 Cohort clients at the end of the month multiplied by (ii) the average PPPM price for the corresponding month for the 2016 Cohort as set forth in the client agreements. For each year, we add the monthly device and subscription fees for all twelve months to obtain the annual device and subscription fees amount. The sum of all monthly amounts paid by clients in the 2016 Cohort for devices and associated supply fees and monthly subscription fees represents the annual device and subscription fees for a given year. Device and subscription fees do not include fees or payments related to any refunds, rebates, discounts, performance guarantees, eligibility
adjustments, early termination fees by a client, or replacement device fees, and also excludes the small, limited number of members who purchase our solutions directly and not through an employer or health system.

Estimated Associated Costs:

Estimated associated costs for the 2016 Cohort includes (i) cost of goods sold and cost of service, and (ii) sales and marketing expenses. We exclude stock-based compensation expense and amortization of intangible assets because these are non-cash charges. We also exclude all research and development and general and administrative expenses from this analysis because these expenses support the growth of our business generally. We allocate our estimated associated costs on a pro rata basis based on the 2016 Cohort’s diabetes members as of the end of a given period as a percentage of all diabetes members as of the end of the same period.

(i) Cost of goods sold and cost of service consist of expenses that are related to initial device costs and testing supplies, and access to our platform. These expenses include data center costs, client support costs, member support and coaching costs. In order to reflect such expenses on a consistent basis across all periods, for cost of goods sold and cost of service, we multiply the number of all diabetes members from clients at the end of the month in the 2016 Cohort by the highest annualized cost per good or service, respectively, over the three year period. With respect to initial device costs and associated supplies only, we amortize these costs over a 24 month period and we only include costs for new diabetes members added in the respective month.

(ii) Sales and marketing expenses consist primarily of personnel expenses for our direct sales team, which assists with initial subscriptions by new clients; our member services team, which drives member enrollment efforts and sell additional solutions to existing clients; channel partner commissions and accruals; and promotional marketing costs. Personnel expenses include salaries, bonuses, benefits for our employees and contractors and allocated overhead costs. Our sales and marketing expenses also include all actual cash payments for sales commissions to our sales team regardless of when the sales commission is paid, in order to include commissions earned on the agreements signed by clients included in the 2016 Cohort.
In 2016, the 2016 Cohort represented $3.7 million in device and subscription fees and $7.2 million in estimated associated costs, representing a contribution margin percentage of (92%). In 2017, the 2016 Cohort represented $12.8 million in device and subscription fees and $5.4 million in estimated associated costs, representing a contribution margin percentage of 58%. In 2018, the 2016 Cohort represented $15.7 million in device and subscription fees and $6.2 million in estimated associated costs, representing a contribution margin percentage of 60%. These metrics are highlighted in the table below:

**2016 Cohort Contribution Margin Analysis**

While we believe the 2016 Cohort is a fair representation of the economics our client relationships, the 2016 Cohort may not be representative of any other groups of clients, members, or periods. We may not experience similar financial outcomes from future clients. Clients within a given cohort have varying PPPM rates in their client agreements, complete the enrollment period at different times throughout the applicable initial and subsequent years, experience varying enrollment rates, and have varying member enrollment marketing costs, channel partner commissions, and on-going account management costs. The contribution margin of cohorts will fluctuate from one period to another depending upon the client's agreed upon PPPM, our cost of goods and cost of services, the number of clients launched in a given period, when in the period they launch enrollment, enrollment rates, how quickly the client reaches our average enrollment rate, total enrolled diabetes members in each cohort, changes in client subscriptions, sales team and channel partner commission payments, and our efficiency in acquiring, retaining, and expanding our client and member relationships. Some of our sales and marketing costs are incurred during the sales cycle and prior to the date of enrollment launch, and therefore are not reflected in the contribution margin because they were incurred in a prior period.

The allocated costs and relationship of device and subscription fees to allocated costs is not necessarily indicative of future performance and we cannot predict whether future contribution margin analyses will be similar to the above analysis. Contribution margin is not a measure that our management uses to manage or evaluate our business, nor is it a predictor of past or future financial performance. Unlike our financial statements, contribution margin is not prepared in accordance with GAAP and other companies may calculate contribution margin differently than our chosen method and, therefore, may not be directly comparable. We have not yet achieved profitability, and even if our revenues exceed these variable costs over time, we may not be able to achieve or maintain profitability.

**Expansion of Diabetes Members within Existing Clients**

We believe that the long-term value of Livongo to our clients increases as our clients expand adoption and usage of our platform. Our sales, marketing, and client success teams help our clients realize and achieve the
potential value from broader adoption of our solutions. We are investing substantially in member experience, client and member success, awareness, and other capabilities to drive an increase in enrolled members within our clients across all solutions.

The chart below illustrates growth of diabetes members who have enrolled in Livongo for Diabetes and have satisfied contractual billing criteria for each cohort over the periods presented. Each cohort represents the number of diabetes members who first became a Livongo user in a given year. For example, the 2018 Cohort includes all diabetes members that first became a member during 2018.

**Expansion of Diabetes Members within Existing Clients**

by Annual Cohort through March 2019

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**Expand Product Density through the Use of Additional Livongo Solutions.** While Livongo for Diabetes was our first solution, there is significant overlap in the target members for each of our solutions and we see significant cross-selling opportunities. According to the CDC, in 2014, 70% of U.S. adults with diabetes also had hypertension. We commercially launched Livongo for Hypertension in August 2018, and as of March 31, 2019, 5.4% of our clients offered the solution to members. We currently offer solutions focused on diabetes, hypertension, prediabetes and weight management and behavioral health. We are continuing to invest in expanding our solutions, as well as developing solutions that address other chronic conditions. As we continue to add solutions that address additional chronic conditions to our platform and deepen our product density, we see increased sales opportunities as members often experience multiple chronic conditions simultaneously and could benefit from access to multiple Livongo solutions. Additionally, we see significant opportunities to add new clients and members to our platform as we offer an increasing number of solutions.

**Enhance and Extend Our Platform.** We offer web and mobile resources, empowering members to be active participants in their journey to becoming and staying physically and mentally healthy. Our AI+AI engine constantly assesses which approaches are most effective in helping our members, and we will continue to add to our repertoire as we receive further data and feedback. We expect to continue to invest in research and
development to enhance our platform by improving our existing solutions and furthering product density by expanding into solutions for other chronic conditions. Our platform is highly scalable and is built to treat the whole person. We believe our platform can be expanded to address a range of chronic conditions, and we are constantly reviewing areas of improvement and potential density expansion. We are continuing to evaluate other chronic conditions, as well as solutions that are compatible with other payors such as government programs, including Medicare Advantage, Managed Medicaid, Fee for Service Medicare, and Medicaid. In addition to our ongoing investment in research and development, we may also pursue acquisitions of businesses, technologies and assets that complement and expand the functionality of our solutions to other chronic conditions, add to our technology or security expertise, or bolster our leadership position by gaining access to new clients or markets. For example, in the second quarter of 2018, we acquired a weight management program and subsequently fully integrated it into our platform as Livongo for Prediabetes and Weight Management, and in the first quarter of 2019, we acquired myStrength, which expanded our solutions to include behavioral health, which we are in the process of integrating into our platform.

Invest in Growth. We expect to continue to focus on long-term revenue growth through investments in sales and marketing and research and development. While we offer our own devices that are compatible with our solutions, we are also working to enhance our offering to integrate existing health monitoring devices and incorporate new technology. For example, in 2019 we announced a technology partnership with Amazon to leverage Amazon’s voice technology for our Livongo for Hypertension and our Livongo for Diabetes solutions. We also believe our solutions are well suited for people living with chronic conditions around the globe, and we view international expansion as a longer-term opportunity. In addition, we expect our general and administrative expenses to increase in absolute dollars for the foreseeable future to support our growth and because of additional costs as we become a public company, including expenses related to compliance with the rules and regulations of the SEC and the listing standards of Nasdaq, additional corporate and director and officer insurance expenses, greater investor relations expenses and increased legal, audit and consulting fees.

Timing of Sales. While we sell to and implement our solutions to clients year-round, we experience some seasonality in terms of when we enter into agreements with our clients and when we launch our solutions to members. We typically enter into a higher percentage of agreements with new clients, as well as renewal agreements with existing clients, in our third and fourth quarters, which coincide with typical employee benefit enrollment periods, with higher implementation rates in the first quarter. Regardless of when the agreement is entered into, we can typically complete client implementation in an average of eleven weeks. Any downturn in sales, however, may negatively affect our revenue in future periods. Accordingly, the effect of downturns in sales and potential changes in our rate of renewals may not be fully reflected in our results of operations until future periods.

Opportunities, Challenges, and Risks

We believe that the growth of our business and our future success are dependent upon many factors, including the ones discussed above. While each of these areas presents significant opportunities for us, they also pose material challenges and risks that we must successfully address to sustain the growth of our business and improve our results of operations. For example, we may fail to expand our client base because adoption of Applied Health Signals is still evolving and it is difficult to predict client demand and member enrollment within our client base. Furthermore, we may be unable to identify, develop and maintain strategic relationships with our existing and potential channel partners, PBMs and resellers, which would adversely affect our ability to attract new clients. We may also fail to grow sales of our solutions within existing clients if such clients do not renew their subscription for our services when existing contract terms expire, or if we do not expand our commercial relationships with them to cover multiple chronic conditions. Additionally, our ability to expand and improve our
solutions depends on our continued investment in our research and development organization, which we cannot be certain will be successful. We expect that addressing such challenges and risks will increase our operating expenses significantly over the next several years. If we fail to successfully address these challenges, risks and variables and other risks that we face, our business, results of operations and prospects may be materially adversely affected. See the sections entitled “Risk Factors” and “Special Note Regarding Forward-Looking Statements” for additional information on the challenges and risks we face.

Key Metrics

We monitor the following key metrics to help us evaluate our business, identify trends affecting our business, formulate business plans and make strategic decisions. We believe the following metrics are useful in evaluating our business.

Our key metrics are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31</th>
<th>Year Ended Three Months Ended March 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017 (dollars in thousands)</td>
<td>2018 (dollars in thousands)</td>
</tr>
<tr>
<td>Clients</td>
<td>218</td>
<td>413</td>
</tr>
<tr>
<td>Enrolled diabetes members</td>
<td>53,858</td>
<td>113,854</td>
</tr>
<tr>
<td>Total contract value</td>
<td>$77,158</td>
<td>$154,468</td>
</tr>
</tbody>
</table>

**Clients**: We define our clients as business entities that have at least one active paid contract with us at the end of a particular period. Entities that access our platform through our channel partners, PBMs, and resellers are counted as individual clients. We do not count our channel partners, PBMs, or resellers as clients, unless they also separately have active paid contracts for our solutions. If business units or subsidiaries of the same entity enter into separate agreements with us, they are counted as separate clients. However, entities that have purchased multiple solutions through different contracts are treated as a single client.

**Enrolled Diabetes Members**: We believe our ability to grow the number of enrolled diabetes members is an indicator of penetration of our flagship solution, Livongo for Diabetes. We define our enrolled diabetes members as all individuals that are enrolled in Livongo for Diabetes at the end of a given period. This number excludes: (i) employees or dependents of a client that has ceased using our solution, (ii) employees who no longer have an employment relationship with an active client, and their dependents, and (iii) employees and dependents who have not been active on or used our solution for a period of time as specified in the applicable client’s agreement, which is typically between four and six months.

**Total Contract Value**: Total contract value is helpful in evaluating our business because it provides a means of evaluating future performance based on the estimated value of contracts entered into during a given period. Our new client subscriptions typically have a term of one to three years, and we generally invoice our clients in monthly installments at the end of each month in the subscription period based on the number of members in such month who were active on or used our solution within a certain period of time, as specified in the applicable client’s agreement. We define total contract value as contractually committed orders to be invoiced under agreements initially entered into during the relevant period. Agreements are only counted in total contract value in the period in which they are entered into, and for purposes of this calculation, we assume an average member enrollment rate. While some of our agreements include clauses providing for termination at the convenience of the client, when evaluating total contract value, we assume an agreement will be serviced for the full term. Until such time as these amounts are invoiced, which occurs at the end of each month of service, they are not recorded in revenue, deferred revenue, or elsewhere in our consolidated financial statements. Total contract value only includes agreements entered into with new clients or renewals entered into with existing clients; it does not include increases to enrolled members during the original term of the contract.

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Non-GAAP Financial Measures

In addition to our financial results determined in accordance with GAAP, we believe the following non-GAAP measures are useful in evaluating our operating performance. We use the following non-GAAP financial measures to evaluate our ongoing operations and for internal planning and forecasting purposes. We believe that these non-GAAP financial measures, when taken together with the corresponding GAAP financial measures, provide meaningful supplemental information regarding our performance by excluding certain items that may not be indicative of our business, results of operations, or outlook. In particular, we believe that the use of adjusted gross profit, adjusted gross margin, and adjusted EBITDA is helpful to our investors as they are metrics used by management in assessing the health of our business and our operating performance. However, non-GAAP financial information is presented for supplemental informational purposes only, has limitations as an analytical tool and should not be considered in isolation or as a substitute for financial information presented in accordance with GAAP. In addition, other companies, including companies in our industry, may calculate similarly-titled non-GAAP measures differently or may use other measures to evaluate their performance, all of which could reduce the usefulness of our non-GAAP financial measures as tools for comparison. A reconciliation is provided below for each non-GAAP financial measure to the most directly comparable financial measure stated in accordance with GAAP. Investors are encouraged to review the related GAAP financial measures and the reconciliation of these non-GAAP financial measures to their most directly comparable GAAP financial measures, and not to rely on any single financial measure to evaluate our business.

Adjusted Gross Profit and Adjusted Gross Margin

Adjusted gross profit and adjusted gross margin are key performance measures that our management uses to assess our overall performance. We define adjusted gross profit as GAAP gross profit, excluding stock-based compensation expense and amortization of intangible assets. We define adjusted gross margin as our adjusted gross profit divided by our revenue. We believe adjusted gross profit and adjusted gross margin provide our management and investors consistency and comparability with our past financial performance and facilitate period-to-period comparisons of operations, as these metrics eliminate the effects of stock-based compensation and amortization of intangible assets from period-to-period as factors unrelated to overall operating performance. The following table presents a reconciliation of adjusted gross profit from the most comparable GAAP measure, gross profit, for each of 2017 and 2018 and for the three months ended March 31, 2018 and 2019:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td></td>
<td>(dollars in thousands)</td>
<td></td>
</tr>
<tr>
<td>Gross profit</td>
<td>$ 22,538</td>
<td>$ 48,162</td>
</tr>
<tr>
<td>Add:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stock-based compensation</td>
<td></td>
<td>18</td>
</tr>
<tr>
<td>Amortization of intangible</td>
<td></td>
<td>12</td>
</tr>
<tr>
<td>Adjusted gross profit</td>
<td>$ 22,550</td>
<td>$ 48,500</td>
</tr>
<tr>
<td>Adjusted gross margin (as a</td>
<td></td>
<td></td>
</tr>
<tr>
<td>percentage of revenue)</td>
<td>73.1%</td>
<td>70.9%</td>
</tr>
</tbody>
</table>

Adjusted EBITDA

Adjusted EBITDA is a key performance measure that our management uses to assess our operating performance. Because adjusted EBITDA facilitates internal comparisons of our historical operating performance on a more consistent basis, we use this measure for business planning purposes and in evaluating acquisition opportunities.

We calculate adjusted EBITDA as net loss adjusted to exclude (i) depreciation and amortization, (ii) amortization of intangible assets, (iii) stock-based compensation expense, (iv) acquisition-related expenses,
The following table presents a reconciliation of adjusted EBITDA from the most comparable GAAP measure, net loss, for each of 2017 and 2018 and for the three months ended March 31, 2018 and 2019:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31</th>
<th>Three Months Ended March 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>Net loss</td>
<td>$(16,858)</td>
<td>$(33,382)</td>
</tr>
<tr>
<td>Add:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization(1)</td>
<td>364</td>
<td>1,263</td>
</tr>
<tr>
<td>Amortization of intangible assets</td>
<td>12</td>
<td>592</td>
</tr>
<tr>
<td>Stock-based compensation expense</td>
<td>2,118</td>
<td>6,332</td>
</tr>
<tr>
<td>Acquisition-related expenses(2)</td>
<td>452</td>
<td>354</td>
</tr>
<tr>
<td>Other income, net(3)</td>
<td>(123)</td>
<td>(1,641)</td>
</tr>
<tr>
<td>Change in fair value of contingent consideration</td>
<td>—</td>
<td>(1,200)</td>
</tr>
<tr>
<td>Provision for (benefit from) income taxes</td>
<td>(61)</td>
<td>28</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$(14,096)</td>
<td>$(27,654)</td>
</tr>
</tbody>
</table>

(1) Depreciation and amortization includes depreciation of property and equipment, amortization of debt discount, and amortization of capitalized internal-use software costs.
(2) Acquisition-related expenses consist primarily of transaction and transition related fees and expenses, including legal, accounting, and other professional fees.
(3) Other income, net includes interest income, interest expense, and other income (expense).

Some of the limitations of adjusted EBITDA include (i) adjusted EBITDA does not properly reflect capital commitments to be paid in the future, and (ii) although depreciation and amortization are non-cash charges, the underlying assets may need to be replaced and adjusted EBITDA does not reflect these capital expenditures. Our adjusted EBITDA may not be comparable to similarly titled measures of other companies because they may not calculate adjusted EBITDA in the same manner as we calculate the measure, limiting its usefulness as a comparative measure. In evaluating adjusted EBITDA, you should be aware that in the future we will incur expenses similar to the adjustments in this presentation. Our presentation of adjusted EBITDA should not be construed as an inference that our future results will be unaffected by these expenses or any unusual or non-recurring items. When evaluating our performance, you should consider adjusted EBITDA alongside other financial performance measures, including our net loss and other GAAP results.

Components of Statements of Operations

Revenue

The substantial majority of our revenue is derived from monthly subscription fees that are charged based on a PPPM basis, which is determined based on number of active enrolled members each month. In certain agreements associated with our Livongo for Behavioral Health by myStrength solution, clients either pay a fixed upfront fee or a monthly fee based on the number of members to whom the solution is available. Our solution incorporates the integration of devices used to monitor members’ chronic conditions, supplies and services, including access to our platform. The contract term is generally one to three years, with one year auto-renewal terms. There is usually a six-month minimum enrollment period within our contracts.

Many of our customers can stop their monthly recurring subscription but will be required to pay an early termination fee if the termination occurs during the minimum enrollment period. Additionally, certain of our contracts are subject to pricing adjustments based on various performance metrics including member satisfaction scores, cost savings guarantees and health outcome guarantees.

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We also generate revenue from the sale of certain of our connected devices such as a cellular-connected weight scale in our Livongo for Prediabetes and Weight Management solution. Revenue for the connected devices is recognized when these devices are shipped and revenue for our services and access to our platform is recognized ratably over time, but not to exceed any amounts that are subject to contingent revenue limitations. However, we expect that this solution will be offered on a PPPM fee basis in the future.

Although we are in the early stages of selling our newer solutions, we are experiencing client demand to broaden their relationship with Livongo and are seeing add-on orders as well as contracts being executed with multiple solutions.

Our contracts are negotiated directly with the customer or through a partner. We are the principal with respect to the contracts originated through partners as we are the primary obligor responsible for providing the solutions to members, we have latitude in establishing pricing, and we have inventory risk. In these situations, revenue is recognized on a gross basis and fees paid to partners are recorded as commission expenses as a component of sales and marketing expenses.

For additional discussion related to our revenue, see the section titled “—Critical Accounting Policies and Estimates—Revenue Recognition” and Note 2 to our audited consolidated financial statements included elsewhere in this prospectus.

Cost of Revenue

Cost of revenue consists of expenses that are closely correlated or directly related to delivery of our solutions and monthly subscription fees, including product costs, data center costs, client support costs, credit card processing fees, allocated overhead costs, amortization of developed technology, and amortization of deferred costs. For our Livongo for Diabetes program, device costs are deferred and amortized over the shorter of the expected member enrollment period or the expected device life. For our newer product lines, device costs are recognized in the first month of the device's activation. Certain personnel expenses associated with supporting these functions, such as salaries, bonuses, stock-based compensation expense and benefits, including allocated overhead expenses for facilities, information technology and depreciation expense, are included in cost of revenue. We expect cost of revenue to increase in the foreseeable future in absolute dollars, but decrease as a percentage of revenue over the long term.

Gross Profit and Gross Margin

Gross profit and gross margin, or gross profit as a percentage of revenue, has been and will continue to be affected by various factors, including the timing of our acquisition of new clients, renewals of our existing agreements, sales of additional solutions to our existing clients, our product lifecycle as we transition into new products, our introduction of new solutions for other chronic conditions, including the costs associated with bringing such new solutions to market, the extent to which we expand our coaching and monitoring features, and the extent to which we can increase the efficiency of our technology through ongoing improvements, cost reduction, and operational efficiency. We expect our gross margin to increase over the long term, although it could fluctuate from period to period depending on the interplay of these and other factors.

Operating Expenses

Our operating expenses primarily consist of sales and marketing, research and development and general and administrative expenses. For each of these categories, personnel costs are the most significant component, which include salaries, bonuses, stock-based compensation expense and benefits. Operating expenses also include overhead costs for facilities, information technology, and depreciation expense.

As a result of certain stock-based compensation expense related to stock awards, described in “—Critical Accounting Policies and Judgments—Stock-Based Compensation,” we expect our research and development, sales and marketing, and general and administrative expenses to increase significantly in absolute dollars.
Research and Development. Our research and development expenses support our efforts to add new features to our existing solutions and to ensure the reliability and scalability of our existing solutions. Research and development expenses consist of personnel expenses, including salaries, bonuses, stock-based compensation expense and benefits for employees and contractors for our engineering, product, and design teams, and allocated overhead costs. We have expensed our research and development costs as they were incurred, except those costs that have been capitalized as software development costs.

We plan to hire employees for our engineering team to support our research and development efforts. We expect that research and development expenses will increase on an absolute dollar basis in the foreseeable future as we continue to increase investments in our technology architecture. However, we expect our research and development expenses to decrease as a percentage of revenue over the long term, although our research and development expenses may fluctuate as a percentage of revenue from period to period due to the timing and amount of these expenses.

Sales and Marketing. Sales and marketing expenses consist of personnel expenses, sales commissions for our direct sales force and our channel partners’ commission expenses, as well as communication, promotional, client conferences, public relations, other marketing events, and allocated overhead costs. Personnel expenses include salaries, bonuses, stock-based compensation expense and benefits for employees and contractors. We currently expense sales commissions in the period of sale. Once we adopt ASC 606, sales commissions may be amortized to sales and marketing expense over the estimated period of benefit. We intend to continue to make significant investment in our sales and marketing organization to increase our brand awareness, drive additional revenue and expand into new markets. As a result, we expect our sales and marketing expenses to continue to increase in absolute dollars in the foreseeable future. However, we expect our sales and marketing expenses to decrease as a percentage of revenue over the long term, although our sales and marketing expenses may fluctuate as a percentage of revenue from period to period due to the timing and amount of these expenses.

General and Administrative. General and administrative expenses consist of personnel expenses and related expenses for our executive, finance, human resources and legal organizations. In addition, general and administrative expenses include external legal, accounting and other professional fees, and allocated overhead costs. We expect our general and administrative expenses to increase in absolute dollars in the foreseeable future. However, we anticipate general and administrative expenses to decrease as a percentage of revenue over the long term, although they may fluctuate as a percentage of revenue from period to period due to the timing and amount of these expenses.

In addition, following the completion of this offering, we expect to incur additional general and administrative expenses as a result of operating as a public company, including expenses related to compliance with the rules and regulations of the SEC and the listing standards of Nasdaq, additional corporate and director and officer insurance expenses, greater investor relations expenses and increased legal, audit and consulting fees.

Other Income, Net
Other income, net primarily consists of interest income earned from our cash and cash equivalents.

Provision for (Benefit from) Income Taxes
The income tax provision and benefit were primarily due to state and foreign income tax expense, and federal benefit related to release of valuation allowance upon acquired deferred tax liabilities.

Deferred tax assets are reduced by valuation allowance to the extent management believes it is not more likely than not to be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income. Management makes estimates and judgments about future taxable income based on assumptions that are consistent with our plans and estimates.
### Results of Operations

The following tables set forth consolidated statements of operations for the periods indicated and such data as a percentage of revenue for the periods indicated:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td><strong>Revenue</strong></td>
<td>$30,850</td>
<td>$68,431</td>
</tr>
<tr>
<td><strong>Cost of revenue</strong></td>
<td>8,312</td>
<td>20,269</td>
</tr>
<tr>
<td><strong>Gross profit</strong></td>
<td>22,538</td>
<td>48,162</td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>12,028</td>
<td>24,861</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>16,502</td>
<td>36,433</td>
</tr>
<tr>
<td>General and administrative</td>
<td>11,050</td>
<td>23,063</td>
</tr>
<tr>
<td>Change in fair value of contingent consideration</td>
<td>—</td>
<td>(1,200)</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>39,580</td>
<td>83,157</td>
</tr>
<tr>
<td><strong>Loss from operations</strong></td>
<td>(17,042)</td>
<td>(34,995)</td>
</tr>
<tr>
<td><strong>Other income, net</strong></td>
<td>123</td>
<td>1,641</td>
</tr>
<tr>
<td><strong>Loss before provision for income taxes</strong></td>
<td>(16,919)</td>
<td>(33,354)</td>
</tr>
<tr>
<td>** Provision for (benefit from) income taxes**</td>
<td>(61)</td>
<td>28</td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td>$ (16,858)</td>
<td>$ (33,382)</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td><strong>Cost of revenue</strong></td>
<td>$ —</td>
<td>$ 18</td>
</tr>
<tr>
<td>Research and development</td>
<td>541</td>
<td>2,188</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>413</td>
<td>916</td>
</tr>
<tr>
<td>General and administrative</td>
<td>1,164</td>
<td>3,210</td>
</tr>
<tr>
<td><strong>Total stock-based compensation expense</strong></td>
<td>$ 2,118</td>
<td>$ 6,332</td>
</tr>
</tbody>
</table>

(2) Includes amortization of intangible assets as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td><strong>Cost of revenue</strong></td>
<td>$ 12</td>
<td>$ 320</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>—</td>
<td>272</td>
</tr>
<tr>
<td><strong>Total amortization of intangible assets</strong></td>
<td>$ 12</td>
<td>$ 592</td>
</tr>
</tbody>
</table>
Includes acquisition-related expenses as follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td>(in thousands)</td>
<td>(in thousands)</td>
<td>(in thousands)</td>
</tr>
<tr>
<td>General and administrative</td>
<td>$452</td>
<td>$354</td>
<td>$196</td>
<td>$207</td>
</tr>
<tr>
<td>Total acquisition-related expenses</td>
<td>$452</td>
<td>$354</td>
<td>$196</td>
<td>$207</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage of Revenue Data</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenue</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>27</td>
<td>30</td>
<td>25</td>
<td>32</td>
</tr>
<tr>
<td>Gross profit</td>
<td>73</td>
<td>70</td>
<td>75</td>
<td>68</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>39</td>
<td>36</td>
<td>33</td>
<td>28</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>53</td>
<td>53</td>
<td>45</td>
<td>46</td>
</tr>
<tr>
<td>General and administrative</td>
<td>36</td>
<td>34</td>
<td>32</td>
<td>44</td>
</tr>
<tr>
<td>Change in fair value of contingent consideration</td>
<td>—</td>
<td>(2)</td>
<td>—</td>
<td>2</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>128</td>
<td>121</td>
<td>110</td>
<td>120</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(55)</td>
<td>(51)</td>
<td>(35)</td>
<td>(52)</td>
</tr>
<tr>
<td>Other income, net</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Loss before provision for income taxes</td>
<td>(55)</td>
<td>(49)</td>
<td>(34)</td>
<td>(51)</td>
</tr>
<tr>
<td>Provision for (benefit from) income taxes</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>(4)</td>
</tr>
<tr>
<td>Net loss</td>
<td>(55)%</td>
<td>(49)%</td>
<td>(34)%</td>
<td>(47)%</td>
</tr>
</tbody>
</table>

Comparison of Three Months Ended March 31, 2018 and 2019

**Revenue**

Revenue was $32.1 million for the three months ended March 31, 2019 compared to $12.5 million for the three months ended March 31, 2018, an increase of $19.6 million, or 157%.

The increase in revenue was primarily due to increases in monthly subscription fees. Total monthly subscription revenue was $29.9 million, or 93% of revenue for the three months ended March 31, 2019, compared to $12.2 million, or 98% of revenue for the three months ended March 31, 2018, representing an increase of $17.7 million, or 145%. Growth in subscription fees is primarily due to growth in enrolled diabetes members, which increased by approximately 95,000, or 138%, from approximately 69,000 members as of March 31, 2018 to approximately 164,000 diabetes members as of March 31, 2019. The monthly subscription fee revenue from Livongo for Hypertension together with the acquisitions of Retrofit Inc. in April 2018 and myStrength, Inc. in February 2019 collectively increased revenue by $2.9 million during the three months ended March 31, 2019.
Cost of Revenue

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended March 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2018</td>
<td>2019</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>$3,104</td>
<td>$10,140</td>
</tr>
</tbody>
</table>

Cost of revenue was $10.1 million for the three months ended March 31, 2019, compared to $3.1 million for the three months ended March 31, 2018, an increase of $7.0 million, or 227%.

The increase in cost of revenue was primarily due to a $4.0 million increase in devices, supplies, and fulfillment costs as a result of growth and increased shipments of diabetes and hypertension welcome kits. The increase was also driven by a $2.0 million increase in member coaching and support costs to support the growth in enrolled diabetes members and a $0.3 million increase in amortization of intangible assets related to the Retrofit and myStrength acquisitions.

Gross Profit and Gross Margin

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended March 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2018</td>
<td>2019</td>
</tr>
<tr>
<td>Gross profit</td>
<td>$9,358</td>
<td>$21,921</td>
</tr>
<tr>
<td>Gross margin</td>
<td>75.1%</td>
<td>68.4%</td>
</tr>
</tbody>
</table>

Gross profit was $21.9 million for the three months ended March 31, 2019 compared to $9.4 million for the three months ended March 31, 2018, an increase of $12.6 million, or 134%. The increase in gross profit was the result of the increase in monthly subscription revenue due to the continued addition of new enrolled diabetes members.

Gross margin was 68.4% for the three months ended March 31, 2019 compared to 75.1% for the three months ended March 31, 2018. The decrease in gross margin was primarily due to an increase in devices, supplies, and fulfillment costs due to the growth in monthly subscription revenue, and the launch of a new solution, Livongo for Prediabetes and Weight Management.

Operating Expenses

Research and Development

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended March 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2018</td>
<td>2019</td>
</tr>
<tr>
<td>Research and development</td>
<td>$4,148</td>
<td>$8,994</td>
</tr>
</tbody>
</table>

Research and development expenses were $9.0 million for the three months ended March 31, 2019 compared to $4.1 million for the three months ended March 31, 2018, an increase of $4.8 million, or 117%.

The increase in research and development expenses was primarily due to a $3.1 million increase in personnel expenses as a result of an increase in headcount and stock-based compensation expense, a $0.7 million increase in third-party consulting costs to support the development of new products, and a $0.4 million increase in amortization expense due to capitalized software development costs.

Sales and Marketing

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended March 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2018</td>
<td>2019</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>$5,611</td>
<td>$14,949</td>
</tr>
</tbody>
</table>
Sales and marketing expenses were $14.9 million for the three months ended March 31, 2019 compared to $5.6 million for the three months ended March 31, 2018, an increase of $9.3 million, or 166%.

The increase in sales and marketing expenses was primarily due to a $3.9 million increase in personnel expenses as a result of department headcount growth, a $2.4 million increase in expenses due to marketing campaigns and health industry conferences, a $1.5 million increase in sales and channel partner commissions due to increased sales activities through our channel partners, a $0.5 million increase in allocated facility and IT costs, and a $0.4 million increase in travel expenses.

**General and Administrative**

<table>
<thead>
<tr>
<th>Three Months Ended March 31,</th>
<th>2018</th>
<th>2019</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>(dollars in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General and administrative</td>
<td>$ 3,943</td>
<td>$ 14,114</td>
<td>258%</td>
</tr>
</tbody>
</table>

General and administrative expenses were $14.1 million for the three months ended March 31, 2019 compared to $3.9 million for the three months ended March 31, 2018, an increase of $10.2 million, or 258%.

The increase in general and administrative expenses was primarily due to a $7.0 million increase in personnel expenses as a result of department headcount growth and stock-based compensation expense, and a $2.8 million increase in professional and consulting costs to support our acquisitions.

**Change in Fair Value of Contingent Consideration**

<table>
<thead>
<tr>
<th>Three Months Ended March 31,</th>
<th>2018</th>
<th>2019</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>(dollars in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Change in fair value of contingent consideration</td>
<td>$ —</td>
<td>$ 674</td>
<td>*</td>
</tr>
</tbody>
</table>

* Percentage not meaningful

The change in fair value of contingent consideration was primarily due to the earn-out contingent consideration associated with the myStrength acquisition.

**Other Income, Net**

<table>
<thead>
<tr>
<th>Three Months Ended March 31,</th>
<th>2018</th>
<th>2019</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>(dollars in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other income, net</td>
<td>$ 136</td>
<td>$ 462</td>
<td>240%</td>
</tr>
</tbody>
</table>

Other income, net increased by $0.3 million from the three months ended March 31, 2018 to the three months ended March 31, 2019 primarily due to interest earned on cash and cash equivalent balances, which increased as a result of the net proceeds of $104.8 million from the issuance of our Series E redeemable convertible preferred stock in April 2018.

**Provision for (Benefit from) Income Taxes**

<table>
<thead>
<tr>
<th>Three Months Ended March 31,</th>
<th>2018</th>
<th>2019</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>(dollars in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provision for (benefit from) income taxes</td>
<td>$ 7</td>
<td>$(1,388)</td>
<td>*</td>
</tr>
</tbody>
</table>

* Percentage not meaningful

The provision for (benefit from) income taxes increased by $1.4 million from the three months ended March 31, 2018 to the three months ended March 31, 2019 due to the release of a valuation allowance arising
from a deferred tax liability in connection with the myStrength acquisition. The deferred tax liability provided an additional source of taxable income to support the realizability of pre-existing deferred tax assets.

**Comparison of Year Ended December 31, 2017 and 2018**

**Revenue**

<table>
<thead>
<tr>
<th></th>
<th>Year End December 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>Revenue</td>
<td>$30,850</td>
<td>$68,431</td>
</tr>
</tbody>
</table>

Revenue was $68.4 million for 2018 compared to $30.9 million for 2017, an increase of $37.6 million, or 122%.

The increase in revenue was primarily due to an increase in monthly subscription fees. Monthly subscription revenue was $64.6 million, or 94% of revenue in 2018 compared to monthly subscription revenue of $30.1 million, or 98% of revenue in 2017. Growth in subscription fees is mainly the result of growth in enrolled diabetes members which totaled approximately 114,000 members at the end of 2018 compared to approximately 54,000 members at the end of 2017. Additionally, revenue increased $2.8 million due to the Retrofit acquisition in April 2018.

**Cost of Revenue**

<table>
<thead>
<tr>
<th></th>
<th>Year End December 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>Cost of Revenue</td>
<td>$8,312</td>
<td>$20,269</td>
</tr>
</tbody>
</table>

Cost of revenue was $20.3 million for 2018 compared to $8.3 million for 2017, an increase of $12.0 million, or 144%.

The increase in cost of revenue was primarily due to a $6.9 million increase in devices, supplies, and fulfillment costs as a result of growth and increased shipments of welcome kits, including new hypertension devices launched in 2018 and the Retrofit acquisition. The increase in cost of revenue was also driven by an increase of $2.6 million in member coaching costs, and an increase of $2.5 million in allocated overhead costs along with platform and cellular costs to support the growth in enrolled diabetes members.

**Gross Profit and Gross Margin**

<table>
<thead>
<tr>
<th></th>
<th>Year End December 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>Gross profit</td>
<td>$22,538</td>
<td>$48,162</td>
</tr>
<tr>
<td>Gross margin</td>
<td>73.1%</td>
<td>70.4%</td>
</tr>
</tbody>
</table>

Gross profit was $48.2 million for 2018 compared to $22.5 million for 2017, an increase of $25.6 million, or 114%. The increase in gross profit was the result of the increase in our monthly subscription fees due to the addition of new enrolled diabetes members in 2018.

Gross margin was 70.4% for 2018 compared to 73.1% for 2017. The decrease in gross margin was primarily due to an increase in devices, supplies, and fulfillment costs due to our growth in monthly subscription fees, and the launch of Livongo for Hypertension in 2018.
### Operating Expenses

#### Research and Development

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017 (dollars in thousands)</td>
<td>2018 (dollars in thousands)</td>
</tr>
<tr>
<td>Research and development</td>
<td>$12,028</td>
<td>$24,861</td>
</tr>
</tbody>
</table>

Research and development expenses were $24.9 million for 2018 compared to $12.0 million for 2017, an increase of $12.8 million, or 107%.

The increase in research and development expenses was primarily due to a $7.9 million increase in personnel expenses related costs due to an increase in headcount and stock-based compensation expense, a $1.7 million increase in consulting expense related to the development of our new product and clinical research, a $1.4 million increase in allocated overhead and information technology platform costs, and a $0.7 million increase in depreciation and amortization expense.

#### Sales and Marketing

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017 (dollars in thousands)</td>
<td>2018 (dollars in thousands)</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>$16,502</td>
<td>$36,433</td>
</tr>
</tbody>
</table>

Sales and marketing expenses were $36.4 million for 2018 compared to $16.5 million for 2017, an increase of $19.9 million, or 121%.

The increase in sales and marketing expenses was primarily due to a $10.3 million increase in personnel expenses and sales commissions as a result of department headcount growth, a $3.7 million increase in channel partner commissions due to increased sales activities through channel partners, a $2.4 million increase in corporate and marketing campaign expenses, a $1.1 million increase in travel expenses, and a $1.1 million increase in consulting costs.

#### General and Administrative

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017 (dollars in thousands)</td>
<td>2018 (dollars in thousands)</td>
</tr>
<tr>
<td>General and administrative</td>
<td>$11,050</td>
<td>$23,063</td>
</tr>
</tbody>
</table>

General and administrative expenses were $23.1 million for 2018 compared to $11.1 million for 2017, an increase of $12.0 million, or 109%.

The increase in general and administrative expenses was primarily due to a $6.7 million increase in personnel expenses as a result of department headcount growth and stock-based compensation expense, a $3.0 million increase in professional and consulting costs, a $0.5 million increase in allocated overhead costs, a $0.4 million increase in travel-related costs, and a $0.3 million increase in indirect tax expenses.

#### Change in Fair Value of Contingent Consideration

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017 (dollars in thousands)</td>
<td>2018 (dollars in thousands)</td>
</tr>
<tr>
<td>Change in fair value of contingent consideration</td>
<td>$—</td>
<td>$(1,200)</td>
</tr>
</tbody>
</table>

97
The change in fair value of contingent consideration was $1.2 million in 2018. This was due to the earn-out contingent consideration related to our Retrofit acquisition.

*Other Income, Net*

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017 (dollars in thousands)</td>
<td>2018</td>
</tr>
<tr>
<td>Other income, net</td>
<td>$ 123</td>
<td>$ 1,641</td>
</tr>
</tbody>
</table>

Other income, net increased by $1.5 million in 2018 primarily due to interest earned on cash and cash equivalent balances, which increased as a result of the net proceeds of $104.8 million from the issuance of our Series E redeemable convertible preferred stock.

*Provision for (Benefit from) Income Taxes*

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017 (dollars in thousands)</td>
<td>2018</td>
</tr>
<tr>
<td>Provision for (benefit from) income taxes</td>
<td>$ (61)</td>
<td>$ 28</td>
</tr>
</tbody>
</table>

We had a benefit of $0.1 million in 2017 primarily due to a federal benefit related to the release of valuation allowance from acquired deferred tax liabilities.
Quarterly Results of Operations and Other Data

The following table sets forth our unaudited quarterly statements of operations data for each of the quarters indicated. The unaudited quarterly statements of operations data set forth below have been prepared on the same basis as our audited consolidated financial statements and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments, that are necessary for the fair statement of such data. Our historical results are not necessarily indicative of the results that may be expected in the future, and the results for any quarter are not necessarily indicative of results to be expected for a full year or any other period. The following quarterly financial data should be read in conjunction with our consolidated financial statements and the related notes included elsewhere in this prospectus.

<table>
<thead>
<tr>
<th>Three Months Ended</th>
<th>March 31, 2018</th>
<th>June 30, 2018</th>
<th>September 30, 2018</th>
<th>December 31, 2018</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue (in thousands)</td>
<td>$12,462</td>
<td>$15,981</td>
<td>$18,782</td>
<td>$21,206</td>
<td>$32,061</td>
</tr>
<tr>
<td>Cost of revenue (1) (2)</td>
<td>3,104</td>
<td>4,709</td>
<td>5,558</td>
<td>6,898</td>
<td>10,140</td>
</tr>
<tr>
<td>Gross profit</td>
<td>9,358</td>
<td>11,272</td>
<td>13,224</td>
<td>14,308</td>
<td>21,921</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development (1)</td>
<td>4,148</td>
<td>5,533</td>
<td>6,804</td>
<td>8,376</td>
<td>8,994</td>
</tr>
<tr>
<td>Sales and marketing (1) (2)</td>
<td>5,611</td>
<td>7,755</td>
<td>11,026</td>
<td>12,041</td>
<td>14,949</td>
</tr>
<tr>
<td>General and administrative (1) (3)</td>
<td>3,943</td>
<td>4,497</td>
<td>6,408</td>
<td>8,215</td>
<td>14,114</td>
</tr>
<tr>
<td>Change in fair value of contingent consideration</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(1,200)</td>
<td>674</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>13,702</td>
<td>17,785</td>
<td>24,238</td>
<td>27,432</td>
<td>38,731</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(4,344)</td>
<td>(6,513)</td>
<td>(11,014)</td>
<td>(13,124)</td>
<td>(16,810)</td>
</tr>
<tr>
<td>Other income, net</td>
<td>136</td>
<td>329</td>
<td>505</td>
<td>671</td>
<td>462</td>
</tr>
<tr>
<td>Loss before provision for income taxes</td>
<td>(4,208)</td>
<td>(6,184)</td>
<td>(10,509)</td>
<td>(12,453)</td>
<td>(16,348)</td>
</tr>
<tr>
<td>Provision for (benefit from) income taxes</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>(1,388)</td>
</tr>
<tr>
<td>Net loss (in thousands)</td>
<td>$ (4,215)</td>
<td>$ (6,191)</td>
<td>$ (10,516)</td>
<td>$ (12,460)</td>
<td>$ (14,960)</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Three Months Ended</th>
<th>March 31, 2018</th>
<th>June 30, 2018</th>
<th>September 30, 2018</th>
<th>December 31, 2018</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of revenue (in thousands)</td>
<td>$1</td>
<td>$3</td>
<td>$6</td>
<td>$8</td>
<td>$6</td>
</tr>
<tr>
<td>Research and development</td>
<td>262</td>
<td>328</td>
<td>381</td>
<td>1,217</td>
<td>361</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>122</td>
<td>362</td>
<td>205</td>
<td>227</td>
<td>219</td>
</tr>
<tr>
<td>General and administrative</td>
<td>354</td>
<td>259</td>
<td>689</td>
<td>1,908</td>
<td>4,924</td>
</tr>
<tr>
<td>Total stock-based compensation expense (in thousands)</td>
<td>$739</td>
<td>$952</td>
<td>$1,281</td>
<td>$3,360</td>
<td>$5,510</td>
</tr>
</tbody>
</table>
(2) Includes amortization of intangible assets as follows:

<table>
<thead>
<tr>
<th>Three Months Ended</th>
<th>March 31, 2018</th>
<th>June 30, 2018</th>
<th>September 30, 2018</th>
<th>December 31, 2018</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>$9</td>
<td>$83</td>
<td>$100</td>
<td>$128</td>
<td>$327</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>—</td>
<td>$80</td>
<td>$96</td>
<td>$96</td>
<td>$237</td>
</tr>
<tr>
<td>Total amortization of intangible assets</td>
<td>$9</td>
<td>$163</td>
<td>$196</td>
<td>$224</td>
<td>$564</td>
</tr>
</tbody>
</table>

(3) Includes acquisition-related expenses as follows:

<table>
<thead>
<tr>
<th>Three Months Ended</th>
<th>March 31, 2018</th>
<th>June 30, 2018</th>
<th>September 30, 2018</th>
<th>December 31, 2018</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General and administrative</td>
<td>$196</td>
<td>$45</td>
<td>$—</td>
<td>$113</td>
<td>$207</td>
</tr>
<tr>
<td>Total acquisition-related expenses</td>
<td>$196</td>
<td>$45</td>
<td>$—</td>
<td>$113</td>
<td>$207</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Percentage of Revenue Data</th>
<th>March 31, 2018</th>
<th>June 30, 2018</th>
<th>September 30, 2018</th>
<th>December 31, 2018</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>25%</td>
<td>29%</td>
<td>30%</td>
<td>33%</td>
<td>32%</td>
</tr>
<tr>
<td>Gross profit</td>
<td>75%</td>
<td>71%</td>
<td>70%</td>
<td>67%</td>
<td>68%</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>33%</td>
<td>35%</td>
<td>36%</td>
<td>39%</td>
<td>28%</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>45%</td>
<td>49%</td>
<td>59%</td>
<td>57%</td>
<td>46%</td>
</tr>
<tr>
<td>General and administrative</td>
<td>32%</td>
<td>28%</td>
<td>34%</td>
<td>39%</td>
<td>44%</td>
</tr>
<tr>
<td>Change in fair value of contingent consideration</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(6)%</td>
<td>2%</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>110%</td>
<td>112%</td>
<td>129%</td>
<td>129%</td>
<td>120%</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(35)%</td>
<td>(41)%</td>
<td>(59)%</td>
<td>(62)%</td>
<td>(52)%</td>
</tr>
<tr>
<td>Other income, net</td>
<td>1%</td>
<td>2%</td>
<td>3%</td>
<td>3%</td>
<td>1%</td>
</tr>
<tr>
<td>Loss before provision for income taxes</td>
<td>(34)%</td>
<td>(39)%</td>
<td>(56)%</td>
<td>(59)%</td>
<td>(51)%</td>
</tr>
<tr>
<td>Provision for (benefit from) income taxes</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>(4)%</td>
</tr>
<tr>
<td>Net loss</td>
<td>$(34)%</td>
<td>$(39)%</td>
<td>$(56)%</td>
<td>$(59)%</td>
<td>$(47)%</td>
</tr>
</tbody>
</table>

Quarterly Revenue Trends

Revenue increased sequentially in each of the periods presented due to the expansion of member enrollment with existing clients as well as the addition of new clients, both of which contributed to the growth in our member base. With the launch of our newer product offerings, we have begun to execute contracts for multiple solutions, which has also contributed to increasing revenue. Revenue trends are impacted by seasonality in our sales and implementation cycles. We typically enter into a higher percentage of agreements with new clients as well as renewal agreements with existing clients in our third and fourth quarters. This results in higher enrollment launch rates in the first quarter.
Quarterly Cost of Revenue Trends

Cost of revenue increased sequentially in each of the periods presented mainly due to the increase in members which resulted in greater device, supplies, and fulfillment costs, as well as growth in personnel costs for our member coaching and support teams.

Quarterly Gross Margin Trends

Gross margin decreased sequentially in each quarter of 2018 and stayed relatively flat in the first quarter of 2019. The decline in 2018 was the result of launching several new product lines, which contributed to higher device, supplies, and fulfillment costs.

Quarterly Operating Expense Trends

Our research and development, sales and marketing, and general and administrative expenses generally increased over the periods presented as we grew headcount and expanded our operations. Sales and marketing expenses increased as a percentage of revenue in the second half of 2018 due to sales commissions paid as a result of seasonably higher bookings. General and administrative expenses increased in the first quarter of 2019 as we had increased stock-based compensation expense associated with the hiring of new executives, increased professional and consulting costs to support our acquisitions, and increased costs associated with preparing for our initial public offering.

Quarterly Income Tax Trends

Our provision for (benefit from) income taxes increased in the first quarter of 2019 due to the release of a valuation allowance arising from a deferred tax liability in connection with the myStrength acquisition and was treated as a discrete tax item. The deferred tax liability provided an additional source of taxable income to support the realizability of pre-existing deferred tax assets.

Key Metrics

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2018</th>
<th>June 30, 2018</th>
<th>September 30, 2018</th>
<th>December 31, 2018</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clients</td>
<td>278</td>
<td>319</td>
<td>349</td>
<td>413</td>
<td>679</td>
</tr>
<tr>
<td>Enrolled diabetes members</td>
<td>68,536</td>
<td>80,368</td>
<td>95,308</td>
<td>113,854</td>
<td>164,168</td>
</tr>
<tr>
<td>Total contract value (in thousands)</td>
<td>$11,281</td>
<td>$24,804</td>
<td>$62,283</td>
<td>$56,101</td>
<td>$48,063</td>
</tr>
</tbody>
</table>

See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Overview—Key Metrics” for additional information.

Liquidity and Capital Resources

To date, we have financed our operations principally through private placements of our equity securities and payments received from clients whose employees and dependents access our solutions. As of March 31, 2019, we had cash and cash equivalents of $55.0 million. Our cash and cash equivalents primarily consist of highly liquid investments in money market funds and cash. Since our inception, we have generated significant operating losses from our operations as reflected in our accumulated deficit of $128.6 million as of March 31, 2019 and negative cash flows from operations.

We expect to continue to incur operating losses and generate negative cash flows from operations for the foreseeable future due to the investments we intend to continue to make in research and development and sales and marketing and due to additional general and administrative costs we expect to incur in connection with operating as a public company. As a result, we may require additional capital resources to execute strategic initiatives to grow our business.
We believe that our existing cash and cash equivalents will be sufficient to fund our operating and capital needs for at least the next 12 months. Our assessment of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement and involves risks and uncertainties. Our actual results could vary because of, and our future capital requirements will depend on, many factors, including our growth rate, the timing and extent of spending to support our research and development efforts, the expansion of sales and marketing activities, the timing of introductions of new solutions or features, and the continued market adoption of our solutions. We may in the future enter into arrangements to acquire or invest in complementary businesses, services and technologies, including intellectual property rights. We have based this estimate on assumptions that may prove to be wrong, and we could use our available capital resources sooner than we currently expect. We may be required to seek additional equity or debt financing. In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us or at all. If we are unable to raise additional capital when desired, or if we cannot expand our operations or otherwise capitalize on our business opportunities because we lack sufficient capital, our business, results of operations, and financial condition would be adversely affected.

**Cash Flows**

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

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31, 2017</th>
<th>2018</th>
<th>Three Months Ended March 31, 2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net cash used in operating activities</td>
<td>$(15,916)</td>
<td>$(33,040)</td>
<td>$(7,944)</td>
<td>$(25,187)</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>$(2,475)</td>
<td>$(23,784)</td>
<td>$(750)</td>
<td>$(29,059)</td>
</tr>
<tr>
<td>Net cash provided by (used in) financing activities</td>
<td>$49,395</td>
<td>$104,408</td>
<td>$(796)</td>
<td>$314</td>
</tr>
</tbody>
</table>

**Cash Flows from Operating Activities**

Our largest source of operating cash flows is cash collections from our clients for access to our solutions. Our primary use of cash from operating activities is for personnel-related expenditures to support the growth of our business.

Net cash used in operating activities during the three months ended March 31, 2019 of $25.2 million was attributable to a $15.0 million net loss, adjusted for $6.1 million of non-cash adjustments and $16.4 million of net cash outflow from changes in operating assets and liabilities. The non-cash adjustments primarily consist of $5.5 million of stock-based compensation expense, $1.3 million of depreciation and amortization, $0.7 million of change in fair value of contingent consideration, partially offset by $1.4 million of deferred income taxes related benefit. The net cash outflow from changes in operating assets and liabilities is primarily the result of an increase of $11.9 million in accounts receivable due to higher billings and timing of collections, an increase of $5.6 million in deferred costs as our upfront device sales have increased, an increase of $2.6 million of prepaid expenses and other assets, partially offset by a decrease of $0.8 million in inventories, all of which were related to growth.

Net cash used in operating activities during the three months ended March 31, 2018 of $7.9 million was attributable to a $4.2 million net loss, adjusted for $1.0 million of non-cash adjustments and $4.7 million of net cash outflow from changes in operating assets and liabilities. The non-cash adjustments primarily consist of $0.7 million in stock-based compensation expense and $0.2 million of depreciation and amortization. The net cash outflow from changes in operating assets and liabilities is primarily the result of an increase of $2.0 million in accounts receivable due to higher billings and timing of collections, a decrease of $1.9 million in accounts payable, accrued expenses and other liabilities, and an increase of $1.3 million in deferred costs as our diabetes device shipments have increased, partially offset by a decrease of $0.8 million in inventories, all of which were related to growth.
Net cash used in operating activities during the year ended December 31, 2018 of $33.0 million was attributable to a $33.4 million net loss, adjusted for $7.5 million of non-cash adjustments and $7.1 million of net cash outflow from changes in operating assets and liabilities. The non-cash adjustments primarily consist of $6.3 million of stock-based compensation expense and $1.9 million of depreciation and amortization, partially offset by a $1.2 million change in fair value of contingent consideration. The net cash outflow from changes in operating assets and liabilities is primarily the result of an increase of $9.2 million in accounts receivable due to higher billings and timing of collections, an increase of $6.0 million in inventories due to the launch of our new hypertension devices and to support our revenue growth, an increase of $4.5 million in deferred costs as our upfront device sales have increased, and an increase of $1.9 million of prepaid expenses and other assets, partially offset by an increase of $10.8 million in accounts payable, accrued expenses and other liabilities, and an increase of $3.0 million in advance payments from partner.

Net cash used in operating activities during the year ended December 31, 2017 of $15.9 million was attributable to a $16.9 million net loss, adjusted for $2.5 million of non-cash adjustments and $1.5 million of net cash outflow from changes in operating assets and liabilities. The non-cash adjustments primarily consist of $2.1 million in stock-based compensation expense and $0.4 million of depreciation and amortization. The net cash outflow from changes in operating assets and liabilities is primarily the result of an increase of $5.4 million in accounts receivable due to higher billings and timing of collections, an increase of $4.0 million in deferred costs as our upfront device sales have increased, and an increase of $1.5 million in inventories, and is partially offset by an increase of $5.1 million in accounts payable, accrued expenses and other liabilities, an increase of $3.8 million in advance payments from partner, and an increase of $1.0 million in deferred revenue, all of which were related to growth.

Cash Flows from Investing Activities

Net cash used in investing activities during the three months ended March 31, 2019 of $29.1 million was primarily attributable to the $27.4 million net payment for the myStrength acquisition, $1.3 million in capitalized internal-use software costs, and $0.3 million in capital expenditures to support our growth.

Net cash used in investing activities during the three months ended March 31, 2018 of $0.8 million was primarily attributable to $0.6 million in capitalized internal-use software costs, and $0.1 million in capital expenditures to support our growth.

Net cash used in investing activities during the year ended December 31, 2018 of $23.8 million was primarily attributable to the $19.3 million net payment for the Retrofit acquisition and the related escrow deposit, $3.6 million in capitalized internal-use software costs, and $1.0 million in capital expenditures for new and upgraded back office systems, including enterprise resource planning software, to support our growth.

Net cash used in investing activities during the year ended December 31, 2017 of $2.5 million was primarily attributable to $1.5 million in capitalized internal-use software costs, $0.6 million of payment for our Diabeto acquisition, and $0.4 million in capital expenditures to support our growth.

Cash Flows from Financing Activities

Net cash provided by financing activities during the three months ended March 31, 2019 of $0.3 million was attributable to proceeds from the exercise of stock options.

Net cash used in financing activities during the three months ended March 31, 2018 of $0.8 million was primarily attributable to a $1.0 million payment of deferred purchase consideration related to our acquisition of Diabeto Inc., partially offset by $0.2 million in proceeds from the exercise of stock options.

Net cash provided by financing activities during the year ended December 31, 2018 of $104.4 million was primarily attributable to $104.8 million of net proceeds from the issuance of our Series E redeemable convertible

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preferred stock and $1.7 million of proceeds from the exercise of stock options, partially offset by $2.0 million of deferred acquisition payments related
to our acquisition of Diabeto Inc.

Net cash provided by financing activities during the year ended December 31, 2017 of $49.4 million was primarily attributable to $52.3 million
of net proceeds from the issuance of our Series D redeemable convertible preferred stock and $1.4 million of proceeds from the exercise of stock
options and warrants, partially offset by $4.3 million for the repayment of long-term debt.

Contractual Obligations and Other Commitments

The following table summarizes our contractual obligations as of December 31, 2018:

<table>
<thead>
<tr>
<th>Payments Due by Period</th>
<th>Less than 1 Year</th>
<th>1-3 Years</th>
<th>3-5 Years</th>
<th>More than 5 Years</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating lease obligations</td>
<td>$2,027</td>
<td>$1,553</td>
<td>$1,354</td>
<td>$296</td>
<td>$5,230</td>
</tr>
</tbody>
</table>

The operating lease obligation amounts above exclude sublease income of $0.1 million as of December 31, 2018. Purchase orders issued in the
ordinary course of business are not included in the table above, as our purchase orders are generally fulfilled within short time periods.

Additionally, in February 2019, we entered into a lease obligation for our Chicago office. The total lease obligation is $0.9 million, net of
sublease income of $0.2 million, over the lease term ending in December 2024. In June 2019, we entered into an amendment to the lease agreement for
our Mountain View office. The amendment expands our office space and extends the lease term of our existing lease. The total future lease obligation
for our Mountain View office is $11.3 million over the lease term ending in January 2024.

Off-Balance Sheet Arrangements

We did not have during the periods presented, and we do not currently have, any relationships with unconsolidated organizations or financial
partnerships, such as structured finance or special purpose entities, that would have been established for the purpose of facilitating off-balance sheet
arrangements or other contractually narrow or limited purposes.

Quantitative and Qualitative Disclosures about Market Risk

We are exposed to certain market risks in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial
position due to adverse changes in financial market prices and rates.

Interest Rate Sensitivity

As of March 31, 2019, our cash, cash equivalents, and restricted cash of $55.2 million consisted primarily of highly liquid investments in money
market funds and cash on hand, which are exposed to market risk due to fluctuations in interest rates and may affect our interest income and the fair
market value of our investments. The primary objectives of our investment activities are the preservation of capital, the fulfillment of liquidity needs
and the fiduciary control of cash and investments. We do not enter into investments for trading or speculative purposes. As of March 31, 2019, a
hypothetical 10% change in interest rates would not have had a material impact on our financial condition or results of operations due to the short-term
nature of our investments. We therefore do not expect our operating results or cash flows to be materially affected by a sudden change in market
interest rates.
Critical Accounting Policies and Estimates

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

The critical accounting estimates, assumptions, and judgments that we believe have the most significant impact on our consolidated financial statements are described below.

Revenue Recognition

The substantial majority of our revenue is derived from monthly subscription fees that are recognized as services are rendered and earned under the subscription agreements with clients. Clients are business entities that have contracted with us to offer the Livongo solution to their employees. Client's employees or their covered dependents enrolled in the Livongo program are referred to as members. Clients are our customers. We improve member health results and reduce healthcare costs by providing an overall health management solution through the integration of Livongo devices, supplies, access to our web-based platform, and clinical and data services. Clients pay monthly subscription fees based on a per participant per month model, based on the number of active enrolled members each month. In certain agreements associated with our Livongo for Behavioral Health by myStrength solution, clients either pay a fixed upfront fee or a monthly fee based on the number of members the solution is available to. In addition, clients can choose to pay an upfront amount with a lower per participant per month fee. The contract term is generally one to three years, with one year auto-renewal terms. There is usually a six-month minimum enrollment period for members. Many of our customers can stop their monthly recurring subscription but will be required to pay an early termination fee if the termination occurs during the minimum enrollment period.

We sell to our clients through our direct sales force and through our partners (channel partners, PBMIs, and resellers). We are the principal with respect to contracts originated through partners, as we are the primary obligor responsible for providing the solutions that are the subject of the arrangement with the client, we have latitude in establishing pricing, and we have inventory risk. In these situations, revenue is recognized on a gross basis, and fees paid to partners are recorded as commissions expense included in sales and marketing expenses in the consolidated statements of operations.

We have determined that our blood glucose meter does not have standalone value because the device is not sold separately and does not function without the associated supplies and services. Our blood glucose meter along with the associated supplies and services are treated as a single unit of account and revenue is recognized on a monthly basis when all of the following criteria are satisfied: (i) there is persuasive evidence that an arrangement exists, (ii) delivery of the device has occurred and services are being rendered, (iii) the price is fixed or determinable, and (iv) collectability is reasonably assured. When the arrangement includes an upfront fee, the upfront fee is deferred and amortized into revenue over the expected member enrollment period, which is estimated to be 24 months and such amount has not been material for all periods presented.

We also derive revenue from the sale of certain of our connected devices when we have determined they have standalone value, such as the cellular-connected weight scale in our Livongo for Prediabetes and Weight Management solution. When an agreement contains multiple units of account, we allocate revenue to each unit of account based on a selling price hierarchy as required. The selling price for a unit of account is based on its Vendor Specific Objective Evidence, or VSOE, or, if available, third-party evidence, or TPE, if VSOE is not available, or best estimate of selling price, or ESP, if neither VSOE nor TPE is available. The ESP is established considering several internal factors including, but not limited to, historical sales, pricing practices and geographies in which we offer our products and solutions. The determination of ESP is judgmental. Amounts
allocated to the device unit of account are recognized upon delivery of the device. Amounts allocated to the service unit of account are recognized ratably over time, but not to exceed any amounts that are subject to contingent revenue limitations.

Certain of our contractual agreements with customers contain a most-favored nation clause, pursuant to which we represent that the price charged and the terms offered to the customer will be no less favorable than those made available to other customers. We have not incurred any obligations related to such terms in these agreements during the periods presented.

Certain of our client contracts are subject to pricing adjustments based on various performance metrics, such as member satisfaction scores, cost savings guarantees and health outcome guarantees, which if not met typically require us to refund a portion of the per participant per month fee paid. We defer the maximum amount of consideration that is contingently refundable to our clients until the performance metric is met.

**Stock-Based Compensation**

We account for stock-based compensation awards, including stock options, restricted stock awards, and RSUs, based on their estimated grant date fair value. We estimate the fair value of our stock options using the Black-Scholes option-pricing model. We estimate the fair value of stock options with a market-based vesting condition using the Monte Carlo simulation model. We estimate the fair value of our restricted stock awards and RSUs based on the fair value of the underlying common stock.

We recognize fair value of stock options, which vest based on continued service, on a straight-line basis over the requisite service period, which is generally four years.

Determining the grant date fair value of options using the Black-Scholes option pricing model requires management to make assumptions and judgments. If any of the assumptions used in the Black-Scholes model change significantly, stock-based compensation for future awards may differ materially compared with the awards granted previously. The assumptions and estimates are as follows:

- **Fair Value of Common Stock**—The absence of an active market for our common stock requires us to estimate the fair value of our common stock. See “—Common Stock Valuations” below.
- **Expected Term**—The expected term represents the period that the stock-based awards are expected to be outstanding. We determine the expected term using the simplified method. The simplified method deems the term to be the average of the time-to-vesting and the contractual life of the options. For stock options granted to non-employees, the expected term equals the remaining contractual term of the option from the vesting date.
- **Expected Volatility**—As we have no trading history for our common stock, the expected volatility was estimated by taking the average historic price volatility for industry peers, consisting of several public companies in our industry that are either similar in size, stage, or financial leverage, over a period equivalent to the expected term of the awards.
- **Risk-Free Interest Rate**—The risk-free interest rate is calculated using the average of the published interest rates of U.S. Treasury zero-coupon issues with maturities that are commensurate with the expected term.
- **Dividend Yield**—The dividend yield assumption is zero, as we have no history of, or plans to make, dividend payments.
The following assumptions were used for the Black-Scholes option pricing model for the periods presented:

<table>
<thead>
<tr>
<th>Expected term (years)</th>
<th>Year Ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
</tr>
<tr>
<td>Expected volatility</td>
<td></td>
</tr>
<tr>
<td>37.1%</td>
<td>36.6% - 38.7%</td>
</tr>
<tr>
<td>Risk-free interest rate</td>
<td>2.0% - 2.3%</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>—%</td>
</tr>
</tbody>
</table>

No options with only service-based vesting conditions were granted during the three months ended March 31, 2018 and 2019.

For awards granted that contain market-based and service-based vesting conditions, we used a Monte Carlo simulation model which utilizes multiple variables to simulate a range of our possible future enterprise value. The determination of the estimated grant date fair value of these awards is affected by a number of assumptions including our estimated common stock fair value on the grant date, expected volatilities of our common stock, our risk-free interest rate, and dividend yield. We recognize stock-based compensation expense for these awards on an accelerated basis over the longer of the explicit service period or the derived service period.

The following assumptions were used for the Monte Carlo simulation model for the periods presented:

<table>
<thead>
<tr>
<th>Expected term (years)</th>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2018</td>
<td>2018</td>
</tr>
<tr>
<td>Expected volatility</td>
<td>60.0% - 64.0%</td>
<td>64%</td>
</tr>
<tr>
<td>Risk-free interest rate</td>
<td>2.6% - 2.9%</td>
<td>2.6%</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>—%</td>
<td>—%</td>
</tr>
</tbody>
</table>

No awards with market-based vesting conditions were granted during 2017.

Based on the assumed initial public offering price per share of $, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, the aggregate intrinsic value of our outstanding stock options as of March 31, 2019 was $, with $ related to vested stock options.

**Restricted Stock Units**

Substantially all of the outstanding RSUs vest upon the satisfaction of both service-based and performance-based vesting conditions. The service-based vesting condition is typically over a four-year service period. The performance-based vesting condition is satisfied on the earlier of: (i) six months and one day following the closing of this offering or (ii) a change in control. The RSUs vest on the first date upon which both the service-based and performance-based vesting conditions are satisfied.

Stock-based compensation expense is recognized only for those RSUs that are expected to meet the service-based and performance-based vesting conditions. As of March 31, 2019, achievement of the performance-based vesting condition was not probable. The closing of an initial public offering and change in control are not deemed probable until consummated. As of March 31, 2019, we have not recorded any stock-based compensation expense for all RSUs that had satisfied the service-based vesting condition on that date. When the performance-based vesting conditions are deemed probable to occur, stock-based compensation expense for our RSUs with performance-based vesting conditions is recognized on an accelerated basis over the requisite service period.

On the settlement dates for these RSUs, we plan to withhold shares and remit income taxes on behalf of the holders at the applicable minimum statutory rates, which we refer to as a net settlement. We currently expect that
the average of these withholding tax rates will be approximately 39%, and the income taxes due would be based on the then-current value of the underlying shares of our common stock. Based on 105,388 RSUs outstanding as of March 31, 2019, for which the service-based vesting condition had been fully satisfied on that date, and assuming (i) the performance-based vesting condition had been satisfied on that date and (ii) that the price of our common stock at the time of settlement was equal to $_______, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, we estimate that this tax obligation on the initial settlement date would be approximately $_______ million in the aggregate. The amount of this obligation could be higher or lower, depending on (i) the price of shares of our common stock on the settlement date and (ii) the actual number of RSUs outstanding for which the service-based vesting condition has been fully satisfied. To satisfy their income tax obligations related to the vesting and settlement on the initial settlement date, assuming a 39% tax withholding rate, we expect to deliver an aggregate of approximately 64,287 shares of our common stock to RSU holders after withholding an aggregate of approximately 41,101 shares of our common stock, based on RSUs outstanding as of March 31, 2019 for which the service-based vesting condition had been fully satisfied on that date. In connection with these net settlements, we would withhold and remit the tax liabilities of approximately $_______ million on behalf of the RSU holders to the relevant tax authorities in cash.

See “Risk Factors—We anticipate spending substantial funds in connection with the tax liabilities that arise upon the initial settlement of RSUs in connection with this offering and following this offering. The manner in which we fund these expenditures may have an adverse effect on our financial condition” and Note 10 to our consolidated financial statements included elsewhere in this prospectus for additional information regarding the vesting and settlement of equity awards granted by us.

**Common Stock Valuations**

The fair value of the common stock underlying our stock awards was determined by our board of directors. The valuations of our common stock were determined in accordance with the guidelines outlined in the American Institute of Certified Public Accountants Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*. In the absence of a public trading market, our board of directors, with input from management, exercised significant judgment and considered numerous objective and subjective factors to determine the fair value of our common stock as of the date of each option grant, including the following factors:

- contemporaneous valuations performed by third-party valuation firms;
- the prices, rights, preferences, and privileges of our redeemable convertible preferred stock relative to those of our common stock;
- the prices of redeemable convertible preferred stock sold by us to third-party investors in arms-length transactions;
- the lack of marketability of our common stock;
- our actual operating and financial performance;
- current business conditions and projections;
- our history and the timing of the introduction of new solutions and services;
- our stage of development;
- the likelihood of achieving a liquidity event, such as an initial public offering or a merger or acquisition of our business given prevailing market conditions;
- recent secondary stock transactions;
- the market performance of comparable publicly-traded companies; and
- U.S. market conditions.
For all approaches other than the market approach utilizing secondary transactions in our capital stock, the equity value was allocated among the various classes of our equity securities to derive a per share value of our common stock. We historically performed this allocation using the option pricing method, or OPM, which treats the securities comprising our capital structure as call options with exercise prices based on the liquidation preferences of our various series of redeemable convertible preferred stock and the exercise prices of our options and warrants.

As of March 31, 2019, we performed this allocation using a probability-weighted expected return method, or PWERM. The PWERM involves the estimation of the value of our company under multiple future potential outcomes for us, and estimates of the probability of each potential outcome. The per share value of our common stock determined using the PWERM is ultimately based upon probability-weighted per share values resulting from the various future scenarios, which primarily included an initial public offering or continued operation as a private company. Additionally, the PWERM was combined with the OPM to determine the value of the securities comprising our capital structure in certain of the scenarios considered in the PWERM. In certain scenarios of the PWERM, the OPM was used to allocate value to the various securities comprising our capital structure.

In addition, we also considered any secondary transactions involving our capital stock. In our evaluation of such transactions, we considered the facts and circumstances of each such transaction to determine the extent to which they represented a fair value exchange. Factors considered include transaction volume, timing, whether such transactions occurred among willing and unrelated parties, and whether such transactions involved investors with access to our financial information.

After the equity value is determined and allocated to the various classes of shares, a discount for lack of marketability, or DLOM, is applied to arrive at the fair value of the common stock. A DLOM is meant to account for the lack of marketability of a stock that is not traded on public exchanges. For financial reporting purposes, we considered the amount of time between the valuation date and the grant date of our stock options to determine whether to use the latest common stock valuation or a straight-line interpolation between the two valuation dates. This determination included an evaluation of whether the subsequent valuation indicated that any significant change in valuation had occurred between the previous valuation and the grant date.

Following this offering, we will rely on the closing price of our common stock as reported on the date of grant to determine the fair value of our common stock, as shares of our common stock will be traded in the public market.

**Business Combinations and Valuation of Goodwill and Other Acquired Intangible Assets**

We have completed a number of acquisitions of other businesses in the past and may acquire additional businesses or technologies in the future. The results of businesses acquired in a business combination are included in our consolidated financial statements from the date of acquisition. We allocate the purchase price, which is the sum of the consideration provided in a business combination to the identifiable assets and liabilities of the acquired business at their acquisition date fair values. The excess of the purchase price over the amount allocated to the identifiable assets and liabilities, if any, is recorded as goodwill. Determining the fair value of assets acquired and liabilities assumed requires management to use significant judgment and estimates, including the selection of valuation methodologies, estimates of future revenue and cash flows, discount rates and selection of comparable companies.

When we issue stock-based or cash awards to an acquired company’s shareholders, we evaluate whether the awards are consideration or compensation for post-acquisition services. The evaluation includes, among other things, whether the vesting of the awards is contingent on the continued employment of the acquired company’s stockholders beyond the acquisition date. If continued employment is required for vesting, the awards are treated as compensation for post-acquisition services and recognized as expense over the requisite service period.
To date, the assets acquired, and liabilities assumed in our business combinations have primarily consisted of goodwill and finite-lived intangible assets, consisting primarily of developed technology, customer relationships and trade names. The estimated fair values and useful lives of identifiable intangible assets are based on many factors, including estimates and assumptions of future operating performance and cash flows of the acquired business, the nature of the business acquired, and the specific characteristics of the identified intangible assets. The estimates and assumptions used to determine the fair values and useful lives of identified intangible assets could change due to numerous factors, including market conditions, technological developments, economic conditions and competition. In connection with determination of fair values, we may engage a third-party valuation specialist to assist with the valuation of intangible and certain tangible assets acquired and certain assumed obligations.

Acquisition-related transaction costs incurred by us are not included as a component of consideration transferred but are accounted for as an operating expense in the period in which the costs are incurred.

**Income Taxes**

We report income taxes in accordance with Accounting Standards Codification, or ASC, 740, *Income Taxes*, which requires us to use the asset and liability method, requiring the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been recognized in the consolidated financial statements or tax returns. Deferred tax assets and liabilities are measured using enacted tax rates that are expected to apply to taxable income for the years in which those tax assets and liabilities are expected to be realized or settled. Valuation allowances are provided when necessary to reduce deferred tax assets to the amount expected to be realized.

We recognize tax benefits from uncertain tax positions if it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. Although we believe we have adequately provided for our uncertain tax positions, we can provide no assurance that the final tax outcome of these matters will not be materially different. We adjust these allowances when facts and circumstances change, such as the closing of a tax audit or the refinement of an estimate. To the extent that the final tax outcome of these matters is different than the amounts recorded, such differences will affect the provision for income taxes in the period in which such determination is made and could have a material impact on our consolidated financial statements.

**Recently Issued Accounting Pronouncements Adopted**

For more information on recently issued accounting pronouncements, see Note 2 to our consolidated financial statements included elsewhere in this prospectus.

**New Accounting Pronouncements Not Yet Adopted**

For more information on new accounting pronouncements not yet adopted, see Note 2 to our consolidated financial statements included elsewhere in this prospectus.

**Emerging Growth Company Status**

We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012. We will remain an emerging growth company until the earlier of (i) December 31, 2024 (the last day of the fiscal year following the fifth anniversary of our initial public offering), (ii) the last day of the fiscal year in which we have total annual gross revenue of at least $1.07 billion, (iii) the last day of the fiscal year in which we are deemed to be a “large accelerated filer”, as defined in the rules under the Exchange Act, and (iv) the date on which we have issued more than $1.0 billion in non-convertible debt during the prior three-year period. We refer to the Jumpstart Our Business Startups Act of 2012 herein as the “JOBS Act,” and any reference herein to “emerging growth company” has the meaning ascribed to it in the JOBS Act.

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We have elected to take advantage of certain of the reduced disclosure obligations in this prospectus and may elect to take advantage of other reduced reporting requirements in our future filings with the SEC. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests. In particular, Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. Thus, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to avail ourselves of this extended transition period and, as a result, we will not adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies until required by private company accounting standards.
LETTER FROM LIVONGO'S FOUNDER & EXECUTIVE CHAIRMAN

“Can you fix this?” That’s what my son Sam asked me when I arrived at his hospital bed after he was given a diagnosis of Type 1 Diabetes. And that began my introduction to the hard realities of diabetes and the world of chronic conditions…Not long thereafter, my Mom was diagnosed with Type 2 Diabetes. It seemed everywhere I turned, I was surrounded by a new world of carb counting, middle of the night blood sugar checking, and the inane rules of our healthcare system.

And, after 18 years, I am still amazed how difficult our healthcare system makes it for people with diabetes, and all of the other chronic conditions, like high blood pressure, weight management, and behavioral health, to stay healthy. What exists today is confusing, complex, and costly. But those are just words. More important, the current healthcare system disempowers people, leaves them feeling alone, and can contribute to a decline in people’s health. So, while my passion around diabetes and other chronic conditions may have started with Sam, it soon became about a much larger vision…to focus on delivering a far better, healthier, consumer-first experience by applying the power of the cloud and of data science to benefit people who struggle with chronic conditions around the world.

At Livongo, we make it easier for people to stay healthy. Our mission from Day 1 has been to “empower people with chronic conditions to live better and healthier lives.” And we were just crazy enough to believe we could do it and have a real impact on our Members’ lives. And while we can’t make their conditions go away, we can make their experience of having a chronic condition dramatically better.

But to really make it happen, we knew we had to be different than anything that came before in healthcare. We started with some core principles and beliefs that have been critical to our success. The first was listening carefully to our prospective Members. They told us they just wanted to live their lives and they were on-the-go constantly, so we needed to make sure our solution made it easier for them. We needed to meet them where they are, not add more complicated and time-consuming tasks, devices, and software. Our name, Livongo --- Living-on-the-Go --- reminds us of their request every time we hear it.

I like to say that “if you want to change the world, you have to change the words,” and so, we did that. We stopped calling people by their disease name, “diabetics,” and instead refer to them as People with Diabetes and “testing your blood sugar” became “checking your blood sugar,” removing the judgment so common in diabetes care. It’s not a test. We also moved from a model of trying to “engage” people to be more involved with their diabetes or other conditions to “empowering” them, putting people back in charge of their own health and their own care. I know it seems counterintuitive. Don’t they need “help”? Nope. They need to be empowered with information, with tools, and with technology that makes life easier. Healthcare today largely happens to us, which is just one of the many reasons we believe it is both less effective and so unsatisfying to people.

So, we vowed to create an entirely new experience for people, changing the business model, not just for businesses, but for individuals. We started with great data science, which allowed us to understand our Members and exactly what each one needed so that we could provide them with the right guidance at the right time, being available for them 24x7x365. And, to reinforce their actions and create lasting behavior change, we made glucose checking strips available at no cost to the Members, eliminating their strip co-pays, and made the entire process easier. For employers, we aligned our payment model, and instead of charging Per Member Per Month, which was traditional, we charge only when Members use our services, Per Participant Per Month, and did so on an affordable monthly subscription model, which makes payments both predictable for employers and more predictable for our own revenues. Perhaps most important, whether we sell direct to large self-insured employers or other or through channel partners, we always establish a trusted and very personal relationship with our Members, which is key to their satisfaction, their health results, and our ability to deliver more cost-effective care. We believe that by changing the rules, we’ve built a more sustainable business model in the long run and, make no mistake, Livongo was built for the long run, because we’re just getting started.
The trust we’ve built, with our Members and our Clients, will allow Livongo to continue to scale rapidly. And we have a lot of opportunity. Today, our solution touches less than one million of the more than 30 million people with diabetes, and that’s just in the United States. And there are many more people around the world looking for the comprehensive solutions we offer. We have expanded beyond diabetes to help the more than 100 million people in the United States living with other chronic conditions.

When we started the company, our thesis was that by combining connected technology and innovative data science with really caring people, we could improve satisfaction, deliver measurable and sustainable health improvements, and do so more cost-effectively and efficiently than the status quo. So, off we went. We started the company in Silicon Valley, where the consumer-first mentality was embedded. We hired people who had previously built the leading cloud-based productivity solutions, database solutions, internet search engines, online games — who could uniquely contribute to the solution we needed to build — and had decided they wanted to make a difference in people’s lives, a real difference. Others came aboard who were living with diabetes and other chronic conditions or, in some cases, who saw the devastating impact that chronic conditions have on the lives of those they love. They knew, as did I, that we could do better.

Over the past five years, we’ve made a lot of progress toward our goal. Our more than 164,000 Members tell us they love us. Our solutions are now used by 20% of the Fortune 500, and our channel partners include four of the top seven payers, two of the largest Pharmacy Benefit Managers, and we are recommended by the leading employer benefit consultants. We’ve helped save over $1,900 annually in healthcare costs for our typical Livongo Member or their employers. Most importantly, we’re empowering people with information, health guidance and insights (what we call Health Nudges), and the tools they need to get and stay happy and healthy.

Our vision has also expanded because our Members, many who struggle with more than one chronic condition, told us we needed a whole person solution, one that focuses on all of their needs. That is exactly what we are building today. Yesterday, we were only diabetes. Today, we also cover hypertension, weight management, pre-diabetes, and behavioral health. And we’ve invested in a new kind of engine, we call AI+AI, that aggregates data, interprets the data to generate health signals, applies these signals to individuals in a personalized way, and then iterates until we offer a Member the right solution at just the right time. This probably sounds a lot like what happens with online delivery of books and movies . . . and it is . . . but it’s never been done in healthcare until now. That’s what we’re doing at Livongo. That’s why we’re different, not just better. We’re learning about what works for individuals at a faster and faster rate, which makes us unique and helps explain why we are being successful where others have failed.

To manage our rapid growth and innovation requires a special group of people and leaders who understand this is more than a business . . . it’s about caring for the people who matter most to all of us. For us, this has always been very personal, which is why we’re so passionate about what we do. It’s about pairing operational execution and growth with compassion. I’m fortunate to work with an extraordinary leadership team that combines complementary skills from the internet, consumer software, health, healthcare IT, and other disciplines with the unique culture we’ve built at Livongo. And we continue to develop our team and add new expertise, preparing for the growth and impact we know we can and will have in the future.

I asked Zane Burke to join Livongo as our Chief Executive Officer in the last year, bringing his experience running an over $5 billion public company, a set of shared values, and his strong drive to make a difference. I came to know Zane as a respected competitor in my last business, then as an early client and Livongo reseller, and recently, as my new partner running Livongo. Dr. Jennifer Schneider, our President, joined us in the early years of the Company, with public company experience as a Chief Medical Officer, but quickly gravitated to designing our strategy and leading the most challenging parts of our business, including product, data science, and clinical. And, Lee Shapiro, my long-time business partner and a long-serving Livongo Board member, was there with me at the beginning when our venture fund provided the first capital to EosHealth, which supplied the technology that gave us a head start, and was the predecessor to Livongo as we know it today. As our Chief Financial Officer, Lee adds experience that is unrivaled, both from a business and financial standpoint, as well as
an extraordinary network across the healthcare space. The rest of the team is just as strong, committed, and brings a diversity of experience that we benefit from every day.

Hemant Taneja, one of the managing partners at General Catalyst, and a Director, was in the room drawing on the white board when we first dreamed the dream and has been there ever since, pushing, questioning, challenging but always supporting the vision to build healthcare’s first true Applied Health Signals company, taking consumer digital health the next level. Another Director, Phil Green, helped pave the way from earliest days, and has been a continuing mentor and partner. And there have been too many others to name…including key clients who were early believers.

To our new investors, welcome. Think of Livongo as not just an investment in an important and growing business, but a way to create a new kind of experience that people appreciate, value, and need . . . something that has been brought to every other major sector of our economy except healthcare. My dream was to bring this offering to 147 million Americans and many more people around the world struggling with chronic conditions. They are asking us, maybe even depending upon us, to put them back in charge of their health and empower them to live happier and healthier lives. We have a great start, and we know there is a lot of ground ahead of us. And, we have an amazing opportunity to make a difference. We believe there is no more important purpose for a business to focus on…creating a new kind of health experience for our Members that can change their lives for the better.

We look forward to pursuing the opportunity and invite you to join us in creating an empowered and healthy future together.

Thank You,

Glen
LETTER FROM LIVONGO’S CHIEF EXECUTIVE OFFICER

I consider it a great privilege to have built a career at the intersection of healthcare and technology for more than two decades. My personal mission has been to enhance the healthcare experience through the use of data, technology, and services to create value by helping people be as close to home, and in the best health possible. This is simple to say but has been hard to achieve in our complex healthcare industry. My excitement in joining Livongo is the opportunity to lead that transformation. I believe Livongo has a new and unique opportunity to create a transformative healthcare experience that empowers people to manage their chronic conditions by meeting people where they are, and on their terms.

I met Glen Tullman in the early 2000s, where I developed a healthy respect for him as a fierce competitor during our years leading Electronic Health Record (EHR) companies. However, we really got to know each other when my prior company became an early Client and reseller of Livongo. I saw firsthand Glen’s inspirational vision and passion for the consumer experience that Livongo offered to my associates and clients at the time. This new vision for the healthcare experience was contagious, and I saw in it a clear pathway to accomplishing my mission. EHRs are necessary but not sufficient to bring about the true change at a consumer level that we both envisioned. I truly value the relationship Glen and I have forged, and the responsibility that Glen has placed with me as he has moved from the Chief Executive role to Executive Chairman. Our ability to maximize the growth of Livongo is much greater with both of us working together.

I have also developed a deep respect and appreciation for Livongo’s leadership team. We have assembled an amazing group, one that I consider to be the best management in digital health. Unlike many rapidly growing companies, this is a deep team of highly capable and experienced professionals, built to scale to much greater heights. My focus, with the team, is to continue scaling Livongo’s operations to support our triple-digit revenue growth. We are also guided by a high-performing Board of Directors that is dedicated to the long-term success of the Company. Glen and I are committed to having a diverse, highly competent Board that shares our passion, integrity, and commitment to Livongo’s mission.

Beyond our leadership team, I believe the Livongo culture affords a significant competitive advantage for our company. Almost half of our employees are managing a chronic condition of their own and all of us are equally as passionate about our Members and Clients. I am thankful for our Livongo team members, who are hyper-focused on creating a new and wholly different Member experience, as evidenced by our average member Net Promoter Score of +64. Our leadership and people operations teams focus on cultivating an inclusive, diverse, transparent, results-driven, and enriching atmosphere designed to attract and retain top talent. This has allowed us to grow our employee base and has helped to keep our unplanned turnover very low, which is incredibly important for a fast growing, ultra-competitive, Silicon Valley-based digital health company. Others have recognized that we have something unique happening at Livongo as we were recently named by Forbes as one of the Best Places to Work in Digital Health.

We strive to use a magical combination of connected technology, coaching, and data science to meet our Members where they are, with insights and relevant information at the right time, the time of their choosing and in the form of their choosing. For the first time in healthcare, I believe we are empowering people to actively manage their health by putting them in charge of teaching us where and how we can be most effective. We know this is working because we are delivering: 1) An experience our members don’t just like, they love it 2) Measurable, sustained, and positive clinical outcomes, and 3) A positive return on investment for Clients, who actually pay for care.

Our virtuous business model is fueling our growth, where our offerings provide employers, health plans, health systems, and payors—collectively our clients—with meaningful value in exchange for a predictable SaaS monthly subscription model. We believe Livongo has an enormous Total Addressable Market which creates the opportunity for us to serve millions of additional potential Members in the future.
The promise of technology in healthcare was always to create a great experience, increase access, improve outcomes, and lower cost. Until now, that simply hasn’t happened. Livongo is achieving these results and has become not just a pioneering chronic condition management solution for people looking to live better and healthier lives, but a new way to experience health and care. We believe that changes everything and is the transformation all of us have been looking for. I am eager to share the journey with you.

Very truly yours,

Zane
BUSINESS

Overview

Our mission is to empower people with chronic conditions to live better and healthier lives. The advancement of technology and data science has transformed nearly every industry except healthcare to create new, consumer-first experiences that are both personalized and empowering. Livongo is pioneering a new category in healthcare, called Applied Health Signals, which is transforming the management of chronic conditions.

In 2014, 147 million adults in the United States had a chronic condition and over 40% had two or more chronic conditions. However, the current U.S. healthcare system is not designed to continually care for people with chronic conditions. People are left to manage these conditions on their own with limited guidance. While new digital health devices may assist with tracking and gathering data on their condition, they fail to provide actionable feedback. As a result of receiving ineffective care, many people are unhappy, feel alone and disconnected, and are not getting healthier, resulting in higher costs for employers, people with chronic conditions, and the people who pay for their care.

Enter Livongo. Our platform, which leverages data science and technology, creates a new kind of personalized experience for people with chronic conditions (our members). This empowers our members to make sustainable behavior changes that lead to better outcomes and lower costs. The Livongo experience makes it easier for our members to stay healthy. We fit into the way our members live, put them in control of managing their condition, and give them an experience that they don’t just like, but love (evidenced by our average member NPS of +64). And because they love the solution, they keep using it, driving high retention and sustained usage, improved health results and bottom line savings, all of which are important to our clients, who pay us a monthly subscription on behalf of our members. A solution our members love, improved health results that are measurable and sustainable, and lower costs. That’s revolutionary in healthcare.

We started with diabetes, which impacts more than 30 million Americans and hundreds of millions of people worldwide. Many people with diabetes are asked to check their blood glucose regularly, and while they gather this information, they don’t have any context to interpret the data. They often receive minimal guidance, counseling, or affirmation of how they are doing. This is just one part of a process that makes having diabetes confusing, complex, and costly. With Livongo for Diabetes, the experience is wholly different. Members receive a smart, cellular-connected meter, automatically-delivered testing materials, real-time coaching and 24x7x365 monitoring. When they track their blood glucose, they receive a highly personalized message about what to do that very moment, which we call a Health Nudge.

Our platform is powered by a proprietary engine (we call it AI+/AI), which Aggregates data from multiple sources, Interprets that data to separate signal from noise, Applies it at just the right time on the right surface to our members and Iterates to build improvements based on what we learn, a process similar to what Amazon does to make recommendations of books you may want to read based on your preferences. We continually enhance our solution by using data science to evaluate which approaches are successful and applying those insights across our member base. While this is common in other industries, Livongo is pioneering this kind of personalized approach to healthcare.

While Livongo began with a focus on diabetes, our vision was always about the health of the whole person. We knew that the tools we were developing in our early days would be applicable across many chronic conditions, and that our members and clients wanted a seamless, easy-to-use experience, whether they had one or multiple chronic conditions. Today, we have created a unified platform that provides smart, cellular-connected devices, supplies, informed coaching, data science-enabled insights and facilitates access to medications across multiple chronic conditions to help our members live better and healthier lives. We recently introduced additional solutions: Livongo for Hypertension, Livongo for Prediabetes and Weight Management, and Livongo for...
Behavioral Health by myStrength. We create consumer-first experiences with high member satisfaction, measurable, sustainable health outcomes, and more cost-effective care for our members and our clients. Our clients are employers, health plans, government entities, and labor unions, which understand the importance of offering an effective platform for consistent management of chronic conditions. For our Livongo for Diabetes solution, which has to date made up approximately 90% of our revenue, clients pay us on a subscription basis with contracts that are typically one to three years in length. Our members are individuals in these organizations who use our solution in order to better manage their chronic conditions on their terms, by empowering them to own their healthcare and to live better and healthier lives. As of March 31, 2019, we had 679 total clients and over 164,000 Livongo for Diabetes members. In addition, we have a growing number of members enrolled in our hypertension, prediabetes and weight management, and behavioral health solutions.

We have experienced significant growth since our inception. Our revenue was $30.9 million and $68.4 million for the years ended December 31, 2017 and 2018, respectively, representing a year-over-year growth rate of 122%. Our revenue increased from $12.5 million for the three months ended March 31, 2018 to $32.1 million for the three months ended March 31, 2019, representing a year-over-year growth rate of 157%. We have incurred net losses of $16.9 million and $33.4 million for the years ended December 31, 2017 and 2018, respectively. Our net loss also increased from $4.2 million for the three months ended March 31, 2018 to $15.0 million for the three months ended March 31, 2019. As of March 31, 2019, we had an accumulated deficit of $128.6 million.

People with Chronic Conditions are Unhappy with the System

People living with chronic conditions are faced with a myriad of challenges. The current U.S. healthcare system is confusing, complex, and costly. It begins with their diagnoses, as they find themselves feeling overwhelmed. Managing their condition is not any easier, as they face a system not designed for chronic conditions. With care given primarily at hospitals or clinics, the existing healthcare service model does not accommodate people who live with their condition 24x7x365. Rather than intermittent and expensive visits to their doctor or the hospital, these individuals can benefit from small, readily accessible interventions, which can include hundreds of different behavior or lifestyle adjustments that can alter clinical outcomes for people with a chronic condition, such as diet advice, medication information, or suggestions for increases in physical activity. Additionally, people living with a chronic condition want a way to streamline their interactions so that they can focus their time and energy on the rest of their lives, instead of on managing their care.

Financial Stakeholders Are Unhappy With the System

Overall, U.S. healthcare spend is on the rise. According to the CDC, close to $3.5 trillion was spent on U.S. healthcare in 2017, an increase of approximately $2 trillion from the year 2000. In 2014, approximately 90% of United States healthcare spend was attributable to people with chronic and behavioral health conditions. Diabetes alone is a massive problem; in the United States over 30 million people are living with diabetes. The cost of diabetes to the U.S. healthcare system, including direct costs to employers, exceeded $237 billion in 2017, with an additional $90 billion in costs due to reduced productivity. These increasing costs have not translated to better outcomes for employers or payors. Additionally, sufficient financial incentives are not in place for physicians or health systems to spend the necessary time monitoring and managing patients with chronic conditions.
We Focus on Personal Empowerment

We are witnessing a transformational shift in consumers taking control of their own health as they have done in almost every other aspect of their lives. We have been able to make a sophisticated technology easy to use for our member base, which averages 53 years of age, through a simple and intuitive user experience. While many organizations in healthcare are trying to “engage” patients, we are fundamentally different in that we “empower” our members with information, access, and tools that they find useful to stay healthy. Feedback powered by our AI+AI engine delivers tailored Health Nudges that make it easier for people to take actions that allow them to stay healthy. By using our engine to “empower” people, which implies action, rather than “engage” people, which implies participation, we believe it becomes much easier to improve their health on their own terms, creating an environment for positive, sustainable behavior change. People simply want to live their lives, not be constantly reminded they are living with a condition. We believe our solution fits into the daily routine of our members and allows them to continue what they are already doing on a regular basis (such as checking their blood glucose, blood pressure or weight).

The Time is Right for a New Focused on the New Health Consumer

We built our solution and came to the market at a pivotal time in both healthcare and technology, with several trends creating a fertile environment for success:

- **Stakeholders are determined to manage costs.** Employers and payors are looking for solutions to complex problems posed by the escalating trend in healthcare costs. Employers are managing costs by taking matters into their own hands, exploring various options to meet these challenges. For example, a 2019 Willis Towers Watson survey found that 85% of employers plan to prioritize clinical areas such as cancer, diabetes, and mental health over the next three years. Payors, PBMs, and health systems are responding to the evolving landscape by developing or partnering with innovative solution providers. Similarly, individuals are becoming both increasingly informed about their personal healthcare options and increasingly cost-conscious.

- **Consumer technology has gone mainstream.** The adoption and use of technology has now transcended age and economic status. The majority of the population has become comfortable with managing important parts of their life, including their health, on their personal technology.

- **The rise of the informed, connected consumer and the importance of user experience.** In the face of increasing costs, we have seen the emergence of the informed, connected consumer, who demands the same information-rich, personalized, convenient service in their healthcare as they find in other aspects of their lives. User experience matters more than ever.

- **Data science and analytical capabilities have never been more advanced.** People are increasingly connecting to more and more devices, and data science can now synthesize this massive amount of data and apply advanced analytical tools to gain important insights never before possible. Data science and machine learning can now be applied in healthcare, and deliver value to our members, who can benefit from the same advances commonly seen in other industries.

We Pioneered the Category of Applied Health Signals to Empower our Members

We are pioneering a new category in healthcare that sits at the intersection of data science, behavior enablement, and clinical impact with the technologies and capabilities to make the experience simpler and easier.
for people living with chronic conditions. With Applied Health Signals, we ensure that every time a member contributes information, they receive tailored, actionable guidance in return. For example, when a member with diabetes checks his or her blood glucose via our cellular-connected blood glucose meter, the member receives a Health Nudge that empowers that member to manage their condition right at the time of natural engagement. This also creates a feedback loop in which we can improve each Health Nudge, based on real member data, for the benefit of our entire member base.

**Investment in Actionable Data Science Creates Sustainable Competitive Advantage: Our AI+AI Engine**

Our multidisciplinary team has built a flexible and robust technology engine capable of processing data from our devices as well as other data sources and turning that information into valuable Health Signals. At the heart of our platform is a core set of four capabilities which we call **AI+AI: Aggregate, Interpret, Apply, and Iterate.**

- **Aggregate**: We collect data from a variety of sources, including devices gathering information from our members in real time or near real time, third-party applications, medical claims, pharmacy claims, member preference surveys, and third-party partners.
- **Interpret**: We sift through this vast trove of health and consumer data and identify relevant Health Signals to develop actionable, personalized and timely insights tailored to a specific person.
- **Apply**: We deliver specific Health Nudges directly to our members, based on each member’s chronic condition and specific needs at exactly the right time in the right format and context.
- **Iterate**: We iterate and continuously tailor a member’s experience based on his or her behavior, preferences, feedback, and results, in much the same way Netflix makes entertainment recommendations based on your preferences.

We believe our approach has created a unique experience for people with chronic conditions, delivering an experience people love, with measurable and sustainable clinical outcomes, and quantifiable cost savings. To do this, we have reimagined the member onboarding process, the physical devices, the digital feedback, the automatic delivery of supplies, and the coaching experience. Our team applies the concepts of AI+AI to best serve our clients and our members, both by using pre-enrollment information to optimize enrollment and create a seamless welcome and onboarding experience, as well as individually tailoring our data-driven feedback, monitoring, and coaching to each current member’s preferences and needs.

**We Address the Whole Person**

We started with diabetes, one of the fastest-growing chronic conditions in the world, yet also one that is very manageable, if people have the right tools and continued motivation to manage it well. Diabetes is a chronic condition with the potential for very costly acute episodes requiring attention if not managed correctly day to day, and very costly longer-term debilitating effects, such as heart attacks and strokes, or kidney and eye disease. Given the significant amount of overlap across chronic conditions, we realized that in order to help people be as healthy and happy as possible, and to achieve cost savings critically important to our clients, we need to address all of the chronic conditions a person is dealing with, such as high blood pressure (according to the CDC, in 2014, 70% of U.S. adults with diabetes also had hypertension). We believe that we have the ability to leverage our technology across multiple chronic conditions to truly focus on the whole person.
Our Success is Defined by Three Objectives

We believe our success depends on achieving three objectives: our members have to love the experience, our products have to produce measurable and sustainable clinical outcomes, and we have to help our clients manage their costs. We deliver results that matter:

- **Satisfaction**: Our member satisfaction is high among healthcare companies, with an average member NPS of +64.

- **Clinical Outcomes**: We have built our solutions and invested in clinical studies to demonstrate measurable and sustained clinical outcomes across each of the chronic conditions we address. For example, Livongo for Hypertension demonstrated a 10 mmHg reduction in systolic blood pressure over a six-week period in individuals with a starting blood pressure of greater than 140/80 mmHg. A 10 mmHg reduction in systolic blood pressure has been shown to reduce stroke rates by 41% and is comparable to starting a blood pressure medication.

- **Cost Management**: Unlike many healthcare solutions, we enable upfront savings and a strong return on investment across many clients. For example, with Livongo for Diabetes, we have been able to demonstrate average client savings of $88 PPPM in the first year of use based on a difference-in-difference cohort analysis, and among qualifying clients who make data available to us, we have been able to demonstrate an average client savings of $129 PPPM.

We Have Built an Efficient and Innovative Go-To-Market Model

As of March 31, 2019, we had 679 clients and over 164,000 Livongo for Diabetes members. In addition, we have a growing number of members enrolled in our hypertension, prediabetes and weight management, and behavioral health solutions. We have a highly efficient go-to-market model with a focus on employers, payors, health plans, government entities, and labor unions. Our solutions appeal to a broad cross-section of sectors, and our current clients represent over 20% of the 2018 Fortune 500 Companies. Our representative clients that generated more than $100,000 in revenue in 2018 include AECOM Technology Corporation, American Foreign Service Protective Association, the Board of Pensions of Presbyterian Church (U.S.A.), Citigroup Inc., Compass Group USA, Cox Enterprises, Inc., Dean Foods Company, Delta Air Lines, Inc., Fortune Brands Home & Security, Inc., the Harris Health System, Hyatt Hotels Corporation, Thomas Jefferson University Hospitals Inc., Lowe's Companies, Inc., Merck & Co., Inc., Microsoft Corporation, Michigan State University, PepsiCo, Inc., SAP SE, Target Corporation, UMass Memorial Health Care, US Foods Holding Corp., and WEA Insurance Corporation. Our clients also include five of the seven largest health plans and the two leading pharmacy benefit managers. We sell to our clients through our direct sales force and with our channel partners.

Our AI+AI engine helps power our onboarding and enrollment process. Our dedicated onboarding team and flexible technology architecture allow us to onboard hundreds of large clients in a matter of weeks. For example, in the three months ended March 31, 2019, we added 146 new clients and approximately 50,000 new Livongo for Diabetes members, which does not include 120 clients from our acquisition of myStrength, which was completed in February 2019. Once a client is onboarded, our AI+AI engine helps us target and engage with potential new members in an informed manner that drives rapid enrollment. One example of this is the improvement in our recruiting and enrollment capability of eligible members. We have reduced the average amount of time it takes to achieve our current average member enrollment rate for each enrollment method at a given client from six months in 2017 to three months in the first quarter of 2019. The reduced enrollment time allows us to deliver value to our members and our clients, as well as to realize revenue three months earlier than previously possible. Our clients who use Livongo for Diabetes and Livongo for Hypertension typically sign one to three year contracts, and pay us on a PPPM basis, beginning when their members start using our services. As a result of the basis on which we charge our clients, rapid member enrollment and continued usage of our solutions are important to our success. We believe the trust we build with our clients and members during their first experience can be leveraged to sell additional solutions needed by our members or others who have not yet used our solutions.
Industry Background and Our Opportunity

Prevalence of Chronic Conditions has Reached Immense Proportions

The prevalence of chronic conditions has reached immense proportions and is expected to continue rapidly growing. As of 2014, approximately 60% of all U.S. adults lived with one or more chronic conditions, and over 40% had two or more chronic conditions. The massive and growing scope of problems associated with chronic conditions has not been limited to the United States. According to the WHO's Global Health Observatory, in 2016, chronic conditions accounted for approximately 71% of deaths worldwide, or 40.5 million people. In addition to an aging population, increasing rates of obesity, sedentary lifestyles, air and water pollution, and other environmental factors are also expected to increase the prevalence of chronic conditions.

The Rising Costs Associated with Chronic Conditions are Accelerating the Need for New Solutions

It is prohibitively expensive in the current U.S. healthcare system to manage patients with chronic and behavioral health conditions, which in 2014 represented 90% of U.S. healthcare spend. In terms of public insurance, management of chronic conditions comprises an even larger proportion of spending: the National Association of Chronic Disease Directors estimates this cost at approximately $0.96 per dollar for Medicare and $0.83 per dollar for Medicaid. According to a 2018 Milken Institute study, chronic conditions collectively cost the U.S. economy approximately $2.6 trillion in lost economic productivity, in addition to $1.1 trillion in direct healthcare costs.

Meanwhile, the number of consumers in the United States that have been able to gain access to healthcare is increasing, but so are out-of-pocket expenses. Over the past five years, the average annual deductible among all covered employees rose by 53% to $1,350. Against this backdrop of increasing costs, there is a paradigm shift occurring in healthcare, in which people are becoming both increasingly informed and increasingly cost-conscious. According to the 2017 Alegeus Healthcare Consumerism Index, 55% of consumers are finding out the price before receiving a medical service, up 15% year-over-year, and 60% are researching physician and facility quality ratings, up 11% year-over-year.

Existing “Solutions” to Treat Chronic Conditions Don’t Work

There is a myth in healthcare that more is better—more devices, more applications, more medications, more physician visits, and more health data. Despite the vast increase in the amount of healthcare data and number of devices, applications, and medications that our system has delivered in recent decades, the epidemic of chronic conditions has only expanded. This is because most existing “solutions” are designed to provide people with generalized information and treatments rather than providing tailored insights to fundamentally empower them to live better and healthier lives.

As one example, today’s standard diabetes and hypertension care plans instruct people to take readings for blood glucose and blood pressure repeatedly with no real feedback to the patient on what the value means or what to do with that value. There are limited personal recommendations, if any. When there are generalized feedback loops, these often occur over large stretches of time with neither nuanced nor personalized messages, and therefore rarely drive behavior changes to improve health outcomes. Furthermore, people today are inundated with many different options to monitor their health, but few are equipped with the necessary tools and knowledge to turn that data into information that they can use to keep themselves healthy on a day-to-day basis.

On the other hand, traditional chronic condition management programs—a collection of initiatives, programs, and innovations intended to increase compliance with treatment decisions—tend to focus on ways of force-fitting people into “solutions” that frequently do not work. For instance, traditional chronic condition management programs often try to increase participation in predesigned care plans by calling at home or at work, reminding people they have a chronic condition, and asking if they need help—a practice with unwanted daily interruptions which can breed shame and guilt. Without the ability to offer an experience that is context-aware or personalized, traditional chronic condition management programs invariably overlook the psychological issues, challenges, and stresses of having a chronic condition.
Rising Consumer Demand for Personalized Healthcare

A study by Prophet and GE Healthcare Camden Group, published in 2016, found that 81% of consumers are unsatisfied with their healthcare experience and the happiest consumers are those who interact with the system the least. This should not come as a surprise. In addition to becoming more cost-conscious, consumers expect more positive experiences and want the same information-rich, personalized, convenient service in healthcare that they find in so many other aspects of their lives—whether getting suggested content from Netflix or receiving reminders from Alexa. They want the tools and information to provide them with the ability to live life seamlessly while effectively managing their health. We believe this trend, in which the informed, connected consumer demands better and more personalized care from the healthcare system, will remain a critical undercurrent that runs far into the future.

Technology Has Already Transformed Nearly Every Industry—and Healthcare is Next

In industry after industry, new disruptors such as Amazon, Netflix, Airbnb, and Uber have used technology to transform the consumer experience. These disruptors deliver services that offer robust data and device platforms working together to deliver satisfying technology experiences—where the consumer is at the center and in control. These experiences are personalized, improve with feedback, and lead to vastly superior consumer experiences. People love the experiences that these companies create. They are empowering experiences, putting the consumer in charge, and leading to natural engagement as users see and feel value.

Healthcare has been resistant to this transformation. One fundamental problem is that the patient is not at the center of the current system and is not treated as the consumer. Patients with multiple chronic conditions receive disaggregated care, resulting in disorganized and confusing treatment plans, often with conflicting guidance. In addition, the lack of transparency coupled with a complicated payor-provider system has continuously overwhelmed consumers and led to poor patient-consumer satisfaction.

Rising healthcare costs have drawn increased scrutiny from consumers demanding higher quality of care at reasonable costs. Furthermore, the ongoing transformation to a value-based care system will rely upon the widespread use of technology in all aspects of healthcare. As a consequence, informed healthcare consumers will help reduce waste in the system by aligning the incentives of both patients and providers, leading to a higher quality of care. We believe this means healthcare is finally ripe for a technology-driven, consumer-first transformation.

Market Opportunity

We are focused on changing the way chronic conditions are treated. As of 2014, 147 million adults in the United States had a chronic condition and over 40% had two or more chronic conditions. Our initial solution is focused on, and the vast majority of our historical sales have come from, the management of diabetes, one of the fastest-growing chronic conditions in the world. Over 30 million Americans are living with diabetes. The American Diabetes Association, or ADA, estimated that costs associated with diabetes, including reduced productivity, was $327 billion in 2017 in the United States alone. We believe we have demonstrated that diabetes can be managed in a far more effective and cost-efficient way while empowering people to live better, healthier lives. Based on our estimates of the
percentage of people receiving healthcare coverage from their employer, the prevalence of diabetes within this subgroup, and our average solution costs, we believe the immediately addressable market size for employees of self- and fully-insured employers with diabetes in the United States is approximately $12.3 billion. Over the longer term we see an additional $15.9 billion opportunity for adults with diabetes receiving healthcare coverage from Medicare or Medicaid. These estimates assume that the prevalence of diabetes between fully-insured and self-insured employer population is the same.

Other chronic conditions also impose a significant financial cost on the healthcare system and broader economy. According to a 2018 Milken Institute study, chronic conditions collectively cost the U.S. economy $3.7 trillion annually. Approximately $2.6 trillion of this amount represents lost economic productivity in the same year. We offer a solution to address hypertension, or high blood pressure, which currently impacts approximately 76.6 million U.S. adults. Based on our estimates of the prevalence of hypertension among adults in the United States, the percentage of the population receiving health care coverage from employers, Medicare or Medicaid, and our average solutions costs, excluding people who also have diabetes, we believe this represents a $18.5 billion opportunity. As we continue expanding into other chronic conditions with our Livongo for Prediabetes and Weight Management, Livongo for Behavioral Health by myStrength, and other future products, we believe we will be able to serve millions of additional potential members.

To provide consistent and comparable data across both chronic conditions and population groups, the estimates of our market opportunity for adults with diabetes or hypertension rely on prevalence rates and population estimates of 2015 due to limitations on the availability of more recent data for all measures. If any of these estimates have significantly changed, our calculations would be correspondingly affected either positively or negatively. Additionally, using the annualized PPPM for our solutions to determine the potential revenue we could realize if we fully penetrated these markets assumes that we will not change the pricing for our solutions. These estimates assume that prevalence rates do not vary by geography and assume that the prevalence of diabetes between fully-insured and self-insured employer populations is the same.

The Livongo Solution

Our goal is to eliminate the confusion, complexity, and excessive costs prevalent today in the healthcare industry. Our team of data scientists aggregates health data and information to create actionable, personalized, and timely health recommendations, and we deliver them when people need it most. We empower our members and improve outcomes by leveraging technology-driven solutions, with a human touch.

Our Offerings

We offer an integrated suite of solutions to promote sustainable health behavior change based on easy, real-time data capture supported by intuitive devices; insights driven by data science; and a human touch when the member needs it. Our suite of solutions shares a common product architecture and data structure, and is delivered through a common user interface, multi-channel applications for management, and a cross-condition integrated coaching model. Each solution can be used alone or in conjunction with others and enables members to share results with family, friends, or healthcare providers.
We currently offer the following solutions:

- **Livongo for Diabetes**: We serve members with type 1 and type 2 diabetes. This solution offers our members a cellular-connected interactive blood glucose meter, unlimited blood glucose test strips, personalized Health Nudges to support behavior change, digital tools across mobile, web, and email, as well as coaching and monitoring. Additionally, we offer 24x7x365 monitoring, whereby members who have dangerously low or high blood glucose receive a call from one of our in-house Certified Diabetes Educators, or CDEs, within a few minutes, no matter where they are in the world. In 2019, we announced a partnership with Amazon to leverage a HIPAA-compliant Amazon Alexa to power a voice-enabled cellular blood glucose monitoring system, allowing members to easily interact with us via the most natural and personalized communication channel— their voice.

- **Livongo for Hypertension**: Members receive a connected blood pressure monitor and cuff which is wireless and transmits data after each measurement to our mobile app. Members are able to review results, get Health Nudges for managing their blood pressure by reminding them to take their medication, follow a healthy eating pattern, be more physically active, and receive coaching and monitoring. Members have access to the same digital toolkit and expert coaching that’s available to them through Livongo for Diabetes. In 2019, we announced a technology partnership with Amazon to leverage Amazon Lex and Amazon Polly to power a voice-enabled cellular blood pressure monitoring system.

- **Livongo for Prediabetes and Weight Management**: Members who are at risk for developing diabetes or are overweight are offered a combination of a cellular-connected weight scale, a rich mobile experience that includes health education curricula and content, personalized coaching by registered dieticians and exercise physiologists, group classes, and online communities to encourage healthy eating and exercise habits. We acquired the technology underlying this solution in 2018.

- **Livongo for Behavioral Health by myStrength**: This solution uses a digital-first approach to delivering evidence-based interventions including cognitive behavioral therapy, acceptance and commitment therapy, positive psychology, mindfulness, and motivational interviewing to help resolve clinical conditions, build resiliency, manage stress, improve mood, sleep better, or simply find daily inspiration. In February 2019, we acquired myStrength and are in the process of integrating the myStrength solution into our solution suite.

**Product Architecture**

*A Whole Person Experience Across Chronic Conditions*

While our initial success has been in diabetes, we focus on empowering the whole person. This means expanding our offering to multiple chronic conditions, allowing people to focus on living their life, rather than being defined by their conditions. Approximately 70% of U.S. adults living with a chronic condition have more than one. All of Livongo’s members’ chronic condition management data feeds into the Livongo cloud, and from there can be integrated and interpreted holistically in order for us to recommend the next overall best health action across chronic conditions.
We aim to fit into our members’ lives in the most natural way possible. Our Livongo for Diabetes members are technologically and economically diverse and average 53 years of age. With this in mind, we designed our platform to be flexible and engage a member through whichever interfaces they most prefer—blood glucose meter, mobile app, web, digital voice, phone, email, or text message—for the task at hand. Members seamlessly move across surfaces as they use Livongo to support different aspects of chronic condition management. The experience is designed to be easy, and does not require our members to get special training, education, or member service to use our solutions.

**Devices to Enable Real-time, Real-world Connectivity**

We deliver smart devices to members that are designed to seamlessly connect to the Livongo cloud platform. This is important for two reasons: first, to ensure consistent access to real-time, high quality clinical-grade data, often coming from medical devices such as our blood glucose meter and our blood pressure monitor; and second, so that we can instantly provide in-the-moment timely feedback. Our blood glucose meter, for example, has an interactive touch screen that makes it possible for members to receive instant blood glucose response messages that are based on clinical guidelines, as well as more strategic long-term health advice through Health Nudges.

**Health Nudges: Technology for Health Behavior Change**

Health Nudges are small, readily accessible interventions, which can include hundreds of different behavior or lifestyle adjustments that can alter clinical outcomes for people with a chronic condition, such as diet advice, medication information, or suggestions for increases in physical activity. These personalized messages are delivered to members on the basis of patterns of data that we interpret. The objective is to support healthy behavior change, and incorporate feedback loops in order to optimize for the most effective messages and offers to support adoption and usage, followed by clinical outcomes improvement. We use machine learning to power the optimal selection of Health Nudges for each individual member.

**Coordinated Clinical Care**

Our members choose with whom they share their data. This includes timely and appropriate sharing with our own coaching team, as well as our members’ own healthcare providers. We provide member-generated and on-demand reports that can be sent to healthcare providers over email, fax, or through the providers’ electronic health records system.
Our Engine—AI+AI

Our AI+AI engine is at the heart of our platform. The more our members use one of our solutions, the more data they generate for our engine, which allows our feedback loop to grow more powerful for all members. In addition, we aggregate dozens of other data sets and combine them, so that we can go on to interpret and extract the drivers of behavior change on a personal member-by-member level, just like an Amazon or Netflix experience, and use that information to deliver a more personalized experience. As the number of members using our solutions and sources of data we collect and aggregate on our platform have grown, the number of data points feeding into our engine has rapidly expanded from over 23 million in 2016 to over 106 million in 2018. For the three months ended March 31, 2019 alone, we collected over 31 million data points. This data is a powerful input for our AI+AI engine and as it grows we believe it will improve performance of our solutions, including coaching and Health Nudges, and enrollment rates.

As demonstrated by the example diagram below, our AI+AI engine is designed to continuously optimize the member experience. Just as importantly, the learnings from a particular member’s AI+AI loop can help inform how to improve another member’s experience. This allows the engine to grow more powerful, smart and efficient over time for all Livongo members.

We are increasingly using our AI+AI engine to create a competitive advantage in the following ways:

- **Optimizing Enrollment:** We leverage our AI+AI engine for the enrollment process to ensure rapid onboarding of new clients and efficient enrollment of new members. Individuals receive a mix of email, direct mailer, and company communications depending on the enrollment method selected by their employer explaining our offerings and instructions on how to enroll. We tailor the form of communication and messaging used based on information we learn and test through our AI+AI engine.

- **Welcome Kit and Onboarding:** Each new member then receives a Welcome Kit. We iterate on aspects such as packaging design, unboxing experience, quick start instructions, and member support in order to minimize the time to first use. In the case of a member with diabetes, this kit includes an already-charged, already-personalized, cellular and wirelessly updateable blood glucose meter, a charger, test strips, a lancing device, lancets, and a “getting started guide” for our solution. Everything, including the devices and unlimited testing supplies, is sent cost free to the member. Livongo measures key performance indicators associated with onboarding including the time from Welcome Kit receipt to first device usage.

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Personalized Feedback and Health Nudges: Once a member starts using our hypertension and/or diabetes offering, he or she immediately gains access to the Applied Health Signals (personalized feedback, Health Nudges and digital tools) that are driven by our AI+AI engine. For example, if we identify that a member has not been checking their blood glucose in the mornings, we can send a Health Nudge that encourages the member to check before breakfast in order to better understand overnight patterns. We provide this feedback through the member’s optimal communication channel, which could be the blood glucose meter, mobile app, web, digital voice, phone, email, or text message.

Remote Monitoring and Coaching: This includes live rapid 24x7x365 response calls, personalized coaching, and warm transfers to appropriate care teams where needed, including connecting members to their pharmacists to seek medication optimization. Our remote monitoring serves as a safety net for our members. We closely track the categories of inquiries, the guidance provided, and the clinical impact of the coaching that is delivered. This information is fed back to our AI+AI engine in order to enhance our digital coaching tools, as well as to optimize the deployment of our expert coaches.

Our AI+AI Engine Drives Member Experience

We are transforming the experience of living with a chronic condition. To do this, we have had to reimagine the member onboarding process, the physical devices, the digital feedback, the automatic delivery of supplies, and the coaching experience. Members who sign up for our solution benefit from several impactful features of our platform. They receive our intuitive and consumer-friendly devices, have access to 24x7x365 monitoring, and receive information about their chronic condition and how to best manage it conveniently and on their own terms.

The Member Journey

ENROLLMENT Launch Quickly in 3 Steps: Identification, Insurance Verification & Streamlined Member Communication We support the whole person from the very beginning with welcome kits & unlimited free test strips. ON BOARDING COACHING We use advanced data science to prompt members to take action when it’s most likely to have clinical impact. Livongo connects with clinical coaches, physician, nurses, and provider networks to build a complete picture. LEARNING OPTIMIZATION Our partnerships with health systems and plans let us securely update medical recommendations in real-time.

Optimizing Enrollment

Our solution is available to members as a covered benefit. Once we are contracted with a new client, we work with that client to identify the full population that is eligible to enroll in our solutions. We then use a variety of personalized and targeted marketing vehicles to notify potential members of their eligibility to enroll in the solution and encourage them to sign up, typically through a tailored combination of enrollment methods, which include email, direct mail, and company communications. We have extensive experience targeting and onboarding members, and we leverage our AI+AI engine to test and iterate messaging and channels in order to drive increasing results. For example, when we have supplemented our outreach efforts with email, we have experienced a year-over-year increase of 38% in average enrollment rates for Livongo for Diabetes from 2017 to 2018, and when using direct mail outreach, we have experienced a year-over-year increase of 13% in average enrollment rates for the same period. We have also seen a 39% year-over-year increase in average enrollment rates for Livongo for Diabetes when using workplace communication channels to distribute information about our solution for the same period. We continue to spend significant time and effort improving the technology
infrastructure of our enrollment process with automated features including pre-populating member and payor eligibility information to ensure that the member enrollment experience is frictionless, quick, and simple.

Multi-Channel, Member-Centered Approach

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<td>Workplace Comm.</td>
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</table>

AI+AI Approach to Marketing Tests

Join Livongo and get a free meter and unlimited test strips.
Welcome Kit and Onboarding

After a member enrolls in our Livongo for Diabetes or Livongo for Hypertension solutions, we send them a Welcome Kit for the conditions he or she chose. We have carefully and iteratively designed a positive “unboxing experience” including the design of the packaging, the layout of the components within the box, as well as the instructional materials. For Livongo for Diabetes, for example, we include our already-charged, already personalized, cellular and wirelessly updateable blood glucose meter, a charger, test strips, a lancing device and lancets to encourage them to start checking their blood glucose right away. With no member setup or activation required, the member can immediately perform their first blood glucose check and be immediately connected to the Livongo platform. In the same top tray of the packaging, we’ve included the charging cable, whose presence informs a member that the device is rechargeable, and doesn’t require batteries. We have found that the quality of this unboxing experience resonates with members, and conveys a sense of quality and caring, which encourages an ongoing relationship.

We then take members through an onboarding journey, which progressively educates members on the features and benefits of our solution. This includes instructions on how a member can configure the solution to best meet their needs, including communication preferences, alert management and notification ranges, and care coordination contacts. Ongoing communications are also tailored by member segment, and staged by their journey in the Livongo solution so that they are receiving the right message at the right time.

Personalized Feedback and Health Nudges

Our devices provide much more than a tool for checking health statistics. They deliver personalized, actionable, and timely information, to members at their moment of interaction, in order to drive behavior changes to improve health outcomes. For example, at each blood glucose check, members enrolled in Livongo for Diabetes receive real-time feedback and coaching, like advice on how to correct for low blood glucose. Today we have over three thousand unique responsive messages that take into account multiple factors beyond a blood glucose value, including medication, food intake, timing, and member-reported metrics, so that we can deliver a clinically-appropriate personalized response.

Members may also receive a Health Nudge, which is based on longer-term data patterns as well as information synthesized from a wide range of sources. Examples include reminding members to more consistently check their blood glucose before a meal, in order to develop a better understanding of their fasting blood glucose. Over time, members learn about the relationships between their blood glucose patterns and their behavior and habits.
We use machine learning and reinforcement learning algorithms to address multiple different facets of a member when Health Nudges are assigned. The data that feeds these algorithms includes clinical status, behavior patterns, checking patterns, and how long a member has been enrolled in the solution. We have delivered over two million Health Nudges to date, and we have seen early success as the system continues to learn and optimize its approach to engagement for behavior change. For example, over 40% of our members who received a Health Nudge changed their behavior in response to a suggestion that they complete a blood glucose check before breakfast.

Remote Monitoring and Coaching

Real-time, cellular-based transmission of blood glucose readings also enables 24x7x365 remote monitoring. Members choose their own monitoring parameters, such as determining the blood glucose level that triggers an alert, and how and to whom alerts are sent, including to family and caregivers. In the case of acute situations, when members experience dangerous out-of-range blood glucose readings, our monitoring team will call the member within minutes to assess their situation and provide instant coaching and assistance to suggest steps to return the member to target range. These real-time interventions can play a critical role in preventing costly medical events such as emergency room visits or hospital admissions.

Additionally, we employ a team of CDEs, a designation which requires healthcare licensure, such as Registered Nurses, Registered Dietitians, Social Workers, Behavioral Psychologists, and extensive additional training and certification. Our CDEs interact with our members via phone, video call, or email (per member preference) to troubleshoot less acute, but still complex, problems. Our CDEs empower our members to make small changes to help improve their health over the long term. For example, if a member is consistently having the same issue with a medication, our CDEs can encourage him or her to adjust the time he or she is taking that medication and thus avoid potentially more serious acute events.

All members of our coaching and monitoring teams are direct U.S.-based employees. They are professionals with specialty training in their area of focus and work full-time from their home offices. Every one of our members receives individualized digital feedback, and where appropriate we supplement this with live, human-powered coaching. Our AI+AI engine helps drive significant efficiency in our coaching and monitoring programs.
Medication Optimization with Healthcare Providers

Medication is a significant determinant of success in managing chronic conditions, and yet many patients do not take medication as prescribed. In 2018, we began to partner with some of our clients to offer a program that enables our members with diabetes to receive free generic medications when they meet a minimum checking commitment. For example, in some agreements, clients waive monthly diabetes medication co-pays if members check their glucose at least five times on their Livongo blood glucose meter in the preceding month. This both lowers cost barriers to medications for our members, while also encouraging increased self-monitoring engagement. The early results are notable: significantly more members refilled a prescription for their diabetes medications in the first 90 days in this medication optimization program.

Removing Barriers to Care

In addition to providing real-time support when it is most needed, we designed our solution to minimize barriers to care. Our Livongo for Diabetes members are provided test strips, a lancing device and lancets, which are automatically sent and delivered to their home. This removes the inconvenience and cost of managing supplies, which are a constant concern for people with diabetes. Our platform automatically tracks the utilization of test strips and proactively sends timely refills.

We empower members to have continuity and coordination with other caregivers, such as family members, or healthcare providers. For example, members can enable push notifications for blood glucose checks so that caregivers can monitor remotely. Importantly, all checking, logging, and coaching data is captured in a Health Summary Report that can be shared electronically with physician clinics. We also offer automated and timely data delivery via industry standards such as Fast Healthcare Interoperability Resources ensuring it can integrate with any electronic health records system.

Addressing the Whole Person

We focus on empowering the whole person to live a better and healthier life. As of 2014, approximately 70% of U.S. adults living with a chronic condition were managing two or more chronic conditions. We realized that in order to help people be healthy and happy, and to achieve cost savings critically important to our clients, we need to address all of the chronic conditions a person is dealing with. We lead the market by offering not just a single point solution for diabetes, but also addressing the broader related set of clinical needs in hypertension, prediabetes and weight management, and behavioral health. For example, if a member in our diabetes solution is diagnosed with hypertension, and enrolls in Livongo for Hypertension, the member will receive a cellular-
connected blood pressure monitor. This monitor seamlessly syncs with the Livongo app, coordinating across both of the member's conditions to provide real-time feedback and guidance for members based on their blood pressure readings. Just as with our connected blood glucose meter, members receive advice on how to understand their readings, an assessment of how they're doing, and lessons that equip members with knowledge of what they can do to better self-manage their condition.

Livongo Connected Devices

Our whole person approach to providing care is not just reflected in breadth of conditions managed, but in the integration of care across multiple conditions through multiple modalities into one unified experience. All member data is aggregated in the Livongo cloud. Members can see and track progress across all their conditions in our mobile app. Key information for each condition is summarized, while reminders, challenges, and lessons are prioritized for display when needed. For example, when a member with diabetes checks his or her blood glucose via a Livongo connected blood glucose meter, the member receives a Health Nudge that empowers that member to manage their condition right at the time of natural engagement. Consistent with caring for the whole person, we also deploy a variety of behavior change interventions in areas such as activity tracking and nutrition challenges to improve members’ overall health. These intervention areas, while not always unique to a given condition such as diabetes or hypertension, are often closely linked to them, so small incremental improvements in these areas can drive meaningful outcomes. And, our coaching team has a full view of all of the member clinical and behavior data required in order to provide highly personalized cross-condition coaching support.

As part of our continued innovation of our members’ experience, in 2019, we announced a technology partnership with Amazon to leverage a HIPAA-compliant Amazon Alexa Skills Kit to power our voice-enabled cellular blood glucose monitoring system. HIPAA compliance is important to our members to ensure their information is being managed securely and privately. For example, you will be able to ask Alexa your most recent blood glucose value or trend. In addition, we announced a technology partnership to leverage Amazon Lex and Amazon Polly to power our voice-enabled cellular blood pressure monitoring system. Our Livongo for Hypertension voice experience will provide eligible participating members the ability to easily interact with Livongo using the most natural, convenient, and personalized communication channel—their voice. For example, when a member completes a blood pressure measurement and receives a high blood pressure reading, they might hear a voice Health Nudge recommending they modify their nutrition plan to lower their sodium intake.

Representative Member Experience

Our solutions are employed by our members in a variety of ways. We have no single or typical member experience, as our solutions are highly personalized for each individual member. Below we have outlined a representative member use case that provides medication affordability for a person with diabetes.

Problem Statement: A member has diabetes and is struggling to pay for their medications to stay healthy.

Livongo’s AI+AI Solution: We can provide an AI+AI solution for a member who is working for a client with a program to waive co-payments for specific medications for their employees if the member performs certain health-related activities, such as measuring their blood glucose regularly using the Livongo for Diabetes solution.

So in this case, we Aggregate the data that tells us which medications are in that $0 co-pay program and the criteria to be eligible for the program. We combine that data with eligibility, formulary, current medications, pharmacy claims (to understand what conditions the member has and which medications they are using to manage their condition(s)), and their ongoing blood glucose data (from their Livongo blood glucose meter).

We Interpret that data and create clear Health Signals that tell us that a specific member intermittently fills their prescription and is not achieving optimal blood glucose readings.
As part of a live coaching session, a Livongo coach **Applies** these Health Signals by introducing the $0 co-pay opportunity to the member, and offers to connect the member to a pharmacist to enroll in a 90 day refill mail delivery program. The member uses the Livongo blood glucose meter consistently over the next month and they are then eligible for their $0 co-pay medication.

We pass this eligibility information and blood glucose values back into our AI+AI engine, ensuring that the member's next refill is a $0 co-pay, observe that the member's blood glucose readings are stabilizing, and **Iterate** the next coaching session content to congratulate and encourage the member to keep up their great progress.

In doing this, we reduce the costliness of healthcare for the member and client, while also helping them achieve their health goals.

**Our Competitive Advantage**

Our competitive success is driven by our ability to provide superior solutions and a strong value proposition for all stakeholders in the member's health journey.

*We Provide Meaningful Value to Our Members*

We put members at the center of our design and have redefined the entire experience, reducing the confusion, complexity, and cost of having a chronic condition and ensuring members are never alone in their experience. This is why:

- **Members Love The Experience We Create**
  - **Satisfaction**: Our members invite us into their lives, and we make sure they are happy with us. We believe our members love our solutions as evidenced by our average member NPS of +64 and through our countless member testimonials.
  - **Ease of Use**: The entire Livongo user experience is simpler and easier. Our devices are designed to be intuitive and easy to use out of the box, regardless of the user's age or condition. The data is automatically captured and can easily be shared with our coaching and monitoring teams. We have built a flexible architecture that enables integration with third-party devices to share data with Livongo, such as Abbott’s FreeStyle Libre Pro System and Apple Watch.
  - **Member Empowerment**: We recognize the importance of empowering consumers and believe that when our members have access to quality information and tools, they are more likely and capable of achieving and sustaining better health. Our solutions empower members to manage their conditions through consistent, impactful interactions. On average, our members with diabetes interact with our solution over 250 times a year. These interactions empower members to track their progress, see measurable results and achieve improved health.
  - **Empathy**: Our members are never alone. Our 24x7x365 monitoring ensures that our members have support, especially when they are at their most vulnerable. Members are also able to designate family members and friends to receive real-time updates on their results and status, empowering their support system with actionable insights and information.

- **We Make Members Healthier**
  - **Digital Coaching Every Time a Member Interacts with Our Solutions**: Each time a member checks their blood glucose level or blood pressure or weight, we give real-time feedback to that member.
  - **On-Demand Coaching**: As members with chronic conditions are consistently managing their conditions outside of the healthcare system, our Livongo-employed coaches, operating in the United States, can be a vital and reliable resource in helping our members on their care journey.
Integrated Experience; Whole Person Solutions: We understand that for some members, treating one health condition may be insufficient, as our members often face more than one chronic condition. Due to the additional challenges of treating multiple chronic conditions, we have created our platform to be flexible and comprehensive to treat the unique needs of these members. We will deliver the Livongo experience across multiple chronic conditions to address the whole person through one integrated interface, which we expect will result in improved health outcomes for our members.

We Save Members Money

Cost Management: We save members money. For example, members enrolled in our Livongo for Diabetes solution receive cellular and wirelessly updateable blood glucose meter, a charger, test strips, a lancing device and lancets, unlimited coaching, and see a reduction in the need for office visits. We also work with clients to enable medication cost-reduction programs.

We Provide Measurable Value to Our Clients

Our clients want their employees and dependents to be healthy. They want programs that people will opt-in to, in significant numbers, that they will like and not complain to the benefits or support team about, and that are budget neutral or will save them money. We address each of their concerns:

Client and Member Satisfaction: Members see real value in our programs, as explained above, and we can prove that with our average member NPS of +64. Furthermore, we have a well-developed account management client success function, which provides support throughout the client lifecycle.

High Quality Care for Members: Our clients care about their members and want them to be healthy, working and productive. Health benefits have become increasingly important in recruiting and retaining employees. And employers understand this. We are empowering our clients’ members to live more fulfilled lives with better health outcomes, as demonstrated in our clinical outcomes, through access to industry-leading chronic care management technologies and solutions. PBMs and health plans see this as an opportunity to add value for their clients.

Strong Cost Management, Savings, and ROI: Healthcare costs are escalating and employers are looking for ways to manage them and save money where possible. We design every solution with a clear path to clinical and financial returns for our clients. For Livongo for Diabetes, our longest standing solution, we are able to show an ROI in the first year of use. Importantly, we measure our solutions’ impact on medical spending with a difference-in-difference analysis. Among qualifying clients who make data available to us, we compare member spending on medical claims from the last twelve months against corresponding data from the twelve month period prior to the launch of Livongo. This allows us to compare spending by members before and after they began using Livongo for Diabetes. We then average the difference in costs across these clients, enabling us to calculate changes in total medical spend, the costs of avoidable ER visits, the total medical savings PPPM, and in diabetes-related spending across our clients. As of May 2019, key outcomes include an average 22% reduction in total medical spending, an average 26% reduction in avoidable ER costs, and an average 20% diabetes-related savings. These reductions translate into a total medical savings of $129 PPPM, and when coupled with the estimated $30 of test strip supply cost savings, result in gross medical cost savings of $159 PPPM.

On average, after deducting estimated test strip supply costs which are already covered in our pricing model, clients see a 3.7 times ROI after one year. Our clients see even greater returns when using Livongo for Diabetes for more than one year. Our AI+AI engine continually makes adjustments, so over time our members stay healthy longer as we more efficiently and effectively serve our member base and further reduce their medical spending. Among five clients who have been with us for at least two years and make data available to us, they experienced an average of 4.4 times ROI in the second year of use, after deducting estimated test strip.
supply costs which are already covered in our pricing model. We believe this demonstrates the long-term financial benefit to clients who subscribe to our solutions.

For our Livongo for Pre-Diabetes and Weight Management members, we are able to show weight loss in their first year of using our solution. To calculate member weight loss, we compare the starting weight for members at the time of enrollment against their weight after twelve months of using Livongo for Pre-Diabetes and Weight Management. As of December 1, 2018, the average decrease in weight for members who had been using our solution for twelve months was 7.32%.

For our Livongo for Behavioral Health by myStrength members, we track individual ratings on the Depression Anxiety Stress Scale, or DASS. For members above the baseline DASS, we regularly compare their starting DASS at the time of enrollment against their DASS over time. We adjust our results to only take into account changes in excess of a standard error of difference. We have monitored the DASS of our members since May 1, 2011, and as of March 31, 2019, 55% of all members of our Livongo for Behavioral Health by myStrength solution showed clinical improvement.

- **Source of Innovation and Increased Revenue**: PBMs and health services/payors comprise an important distribution channel for us, as well as an important client (buyer). They face a number of challenges that our solutions help address:
  - They are facing an innovation imperative from their own clients, who are demanding that they bring them new solutions that will help them stem increases in healthcare costs. With that imperative, our PBM and health services/payor clients look to partner with us to demonstrate innovation. Importantly, that innovation cannot be “one-off” or disconnected, but must be integrated into their overall offering.
  - PBMs and health services/payors need to continually find ways to boost their top and bottom line. We provide a new source of revenue and additional value. We contract with PBM partners as resellers of our solutions. Additionally, for Medicare Health Plans, our solutions drive meaningful improved health outcomes and member satisfaction, closing gaps in care and thereby influencing Healthcare Effectiveness Data and Information Set and star ratings, which can materially increase reimbursement to these plans.

*We Provide Meaningful Value to Healthcare Providers*

- **Providers Love Us**
  - Physicians want to do good, and we make that easier. We integrate into their workflow and make it easier for them to do their job, by providing high quality data that enables them to focus on the issues that matter.
  - We extend providers’ reach, giving them access to and connection with the member’s chronic condition management experience beyond the doctor's office and healthcare setting. People with diabetes or other chronic conditions typically access the healthcare system for physician visits and
check-ups, but this represents less than 0.1% of the time in their lives with chronic conditions – over 99.9% of the time, they have to manage the condition on their own.

- Physicians should be enabled to spend their limited time on patients who need them most. We help prevent provider burnout and increase work satisfaction by directing the right people to see their provider. Also, with remote monitoring, physicians can know in advance who will really benefit from being seen and can focus on getting those people in the door, thereby optimizing outcomes and revenue.

- **Clinical Improvement**
  
  - Actionable data and insights into patients’ experience: Our platform synthesizes a wide range of data signals into an easily-interpretable physician’s report that is aligned with physicians’ existing workflows and can be integrated into their existing practice management and electronic health record systems. These insights help physicians make timely changes to medications and also close gaps in care.

- **Cost Management**
  
  - Efficiency: As physicians are increasingly limited in the time available to see patients, better and more accessible data regarding chronic conditions makes it possible for them to focus on the highest priority issues that a patient faces.
  
  - Value-based care and pay for performance savings: Physicians are increasingly held accountable for outcomes, and outcomes for people with chronic conditions are increasingly determined outside the confines of the clinic. We improve outcomes, and reduce cost, and thereby drive increased financial value.

*We Have Purpose-Built Our Products to Support Our Attractive Business Model*

A large percentage of people with chronic conditions have them for life. Our model builds a long-term relationship with our members and our clients by delivering increasing value over time. We currently experience very low member and client churn, in part due to this model.

We have also invested substantially in the strength and durability of our model, on an individual level, by being there 24x7x365 with experienced, informed, and empathic people who provide assistance as needed. This builds strong trust with our members, and also with our clients, where we invest in deeply integrated systems and consistent, relationship-based service, to sustain long-term bonds that go beyond the contracts we sign, as evidenced by our dollar-based net expansion rate of 113.8% as of December 31, 2018. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Factors Affecting Performance—Product Intensity and Enrollment Impacts our Performance” for additional information.

*We have Several Differentiated Features that Help Us Succeed*

- **Products whose performance improves over time**: Our solutions deliver better and stronger results over time as we learn more about a member’s own specific health needs and can make recommendations on the basis of a member’s own data. This value enhancement occurs at the member and population level, such that for clients, financial outcomes often improve over time as well.

- **Suite of services to address the whole person**: Beginning with our Livongo for Diabetes solution, we have driven significant, measurable outcomes for our clients and have become a trusted platform to help manage their member populations with chronic conditions. This presents a significant opportunity for us to not only capture more members onto our platform, but also to upsell additional new products and manage all chronic conditions for our clients.

- **Recurring revenue business model**: We have aligned the incentives of each stakeholder in the member’s health journey by designing our solutions with a clear path for clinical and financial outcomes. As a result, we have developed a highly recurring and predictable business model that results in low churn, as
demonstrated by our client retention rate of 95.9% for the year ended December 31, 2018. We also closely measure member retention and reasons for any member losses. Our average monthly member churn for 2018 was approximately 2%. We calculate our monthly member churn by looking at the members who were with us at the beginning of each monthly period and then subtracting the number of those members still on our solution at the end of each monthly period and dividing that number by the starting member number for that monthly period. To get our average annual monthly member churn, we take the average of all twelve months of churn. Importantly, this calculation does not include the potential positive impact of any new member additions over the same time period. Member departures occur for three primary reasons: approximately 74% of the average monthly member churn in 2018 was due to members losing eligibility, which primarily occurs when a member leaves their current employer; approximately 20% is attributable to lapsed use, where a member is no longer active on or using our solution; and approximately 6% came from client decisions to terminate their contract with us.

We have significant opportunity to grow our business with our existing clients through increased enrollment (product intensity) and the sale of additional solutions to these clients (product density); approximately 5% of our clients currently have more than one of our solutions, which demonstrates the significant white space available for us.

- **Differentiated go-to-market strategy**: We have developed a go-to-market approach that allows us to roll out our platform to thousands of members in a short time and to launch multiple clients quickly. We work with our clients to access claims data and, using our AI+AI engine, we can identify potential members who are diagnosed with a relevant condition. We work within our clients’ existing benefits teams to quickly enroll members in our solutions. We have aligned our incentives with those of our clients by only charging on a PPPM basis. We believe that the significant benefits of our platform are evidenced by the fact that we count over 20% of the 2018 Fortune 500 companies amongst our current clients.

- **Strong relationships with influencers and resellers**: We have invested in and benefit greatly from a strong network of influencer and reseller relationships. Our influencer partners, who are trusted advisors to client’s benefits buying decisions, help to greatly increase our visibility to clients and provide meaningful third-party validation of the benefits of our services. Our channel partner clients (such as Express Scripts and CVS Health) provide an additional distribution channel whereby we may capture new clients through existing relationships.

**We Have Built a Secure and Scalable Technology Platform Driven by Our AI+AI Engine:**

- **Cloud-based technology architecture built for growth**: We have built a highly scalable enterprise solution with the functionality to manage multiple solutions serving millions of members, and to grow with our clients as they expand their operations.

- **Highly secure platform**: Our technology infrastructure has been built within the public cloud with significant standards-based integrations (for example with Fast Healthcare Interoperability Resources) and are fully compliant with all regulatory policies. We have received all necessary certifications including SOC 2 certification and are in compliance with the numerous U.S. state and federal laws and regulations related to the privacy and security of personal health information.

- **Robust integrations**: Our platform ingests, processes, and stores data from a wide range of sources, at scale, including medical and pharmacy claims and eligibility files.

- **Powerful platform built on continuous improvement**: Our AI+AI engine is powered by data science that allows continual aggregation, interpretation, application and iteration of large sets of real-time data. We believe that this engine continuously optimizes our processes which drives a more powerful, smarter solution to our members.

- **Platform to manage whole person experience**: Our solutions are built upon our AI+AI engine and address multiple chronic conditions. Due to extensive comorbidities in chronic populations, our robust platform allows us to introduce new solution sets for our clients and to better address the needs of our members.
We Are Passionate About Improving the Experience in Healthcare

Our team has decades of collective experience across every facet of the healthcare and consumer industries. We operate in a heavily regulated industry where expertise in these sectors is critical to our success. More importantly, our passion is deeply personal, almost half of Livongo's employees have a chronic condition. We build our solutions with empathy because we understand these issues personally.

How We Plan to Empower More Lives

- **Increase Member Enrollment within Existing Clients (Product Intensity).** At the end of twelve months, our average enrollment rate for Livongo for Diabetes clients who launched enrollment in 2018 is 34% of the total recruitable individuals at a client. The average enrollment rate after twelve months for fully optimized clients who began enrollment in 2018 is over 47%. We have a significant opportunity at our existing clients to reach higher enrollment rates, particularly when we are able to obtain email access to prospective members. We recently entered into an agreement with one of our channel partners that allows us to access all available emails from our joint clients, which provides us another pathway for member outreach and increased enrollment.

- **Offer Additional Solutions that Expand Share of Wallet with Existing Clients (Product Density).** We believe we are underpenetrated within our existing client base. Our client base of 679 organizations as of March 31, 2019 represents a significant growth opportunity for us. The vast majority of our clients' members use Livongo for Diabetes. We have a significant opportunity with those clients to offer our Livongo for Hypertension, Livongo for Prediabetes and Weight Management, and Livongo for Behavioral Health by myStrength solutions. For members who have more than one chronic condition that is covered by the Livongo suite of solutions, we can cross-sell in order to enhance the member experience, improve clinical results, and also increase our revenue per user. Benefits accrue to clients who have multiple Livongo solutions, as they can achieve higher returns on their investments in Livongo, thanks to both the increase in the size of the population using Livongo solutions, as well as the deeper clinical improvement and cost savings opportunities that come from the whole person approach.

- **Expand Client Base.** We believe that our market remains underpenetrated. We will continue to invest in our direct sales and marketing efforts and our channel partners to continue to acquire new clients, including employers, health plans, government entities, and labor unions. We also believe there is significant potential for growth in other markets, including Medicare, which has approximately 42 million Medicare beneficiaries with a 30% prevalence of diabetes, fully-insured employers, which have approximately 58 million employees and dependents with a 9% prevalence of diabetes, self-insured employers, which have approximately 99 million employees and dependents with a 9% prevalence of diabetes, and Medicaid, which has approximately 64 million Medicaid beneficiaries with a 8% prevalence of diabetes. We recently received approval from the U.S. Centers for Medicare & Medicaid Services as an enrolled provider for Medicare Advantage members. We expect to continue to invest in expanding our client base within these markets.

- **Continue to Grow the Capabilities of Our Platform.** We constantly improve our platform and existing solutions. As we increase membership and generate new data from each of those members using our platform, our AI+AI engine continues to improve. This helps us deliver more effective solutions to our members, onboard new members more efficiently, grow our penetration at any given client, and improve the features of our solutions, as well as accelerate the development and delivery of new products to the market.

- **Continued Business Development.** We will continue to organically build new solutions and, where appropriate, execute on acquisitions and partnerships, to rapidly expand to other chronic conditions and help our members live better and healthier lives.

- **Expand Internationally.** Chronic condition management is a global issue and many of our large self-insured employer clients have populations abroad. Despite different healthcare systems, we believe our
Clinical Outcomes and Studies

The Livongo platform has multiple solutions that target different chronic conditions, which is fundamental to our focus on the whole person. Our initial focus has been on diabetes because that is a condition in which we believe there is the most opportunity to make a meaningful impact, and improve healthcare outcomes and lower costs. It is also a condition which is associated with multiple different comorbidities, each of which represents a significant health and economic burden.

The majority of our end-users are individuals with type 2 diabetes. Most people with type 2 diabetes are diagnosed after age 45 and have at least two co-existing chronic conditions. The most common chronic conditions in people living with type 2 diabetes included hypertension (73.6%), overweight/obesity (87.5%), hyperlipidemia (75.2%), chronic kidney disease (36.5%), and cardiovascular disease (32.2%).

Typically, the health of people with type 2 diabetes is managed by a primary care physician, although few may also be seen by an endocrinologist. On average, people with type 2 diabetes see a physician more than five times per year. While there are a number of metrics that physicians use to track the health of these patients, the most common is hemoglobin A1c, or HbA1c, which measures the average 90 day glycemic (blood glucose) control in red blood cells. Clinical guidelines published by the ADA suggest that a reasonable HbA1c target for many non-pregnant adults is less than 7%, or 154 milligrams per deciliter. A higher HbA1c has been associated with increased health risk and associated costs. The ADA estimates that annual healthcare costs for a person with diabetes costs an average $16,750 compared to $7,151 for a healthy individual. Research from the BMJ also suggests that a 1% reduction in HbA1c levels leads to a 21% reduction in death from diabetes, 14% reduction in heart attacks and 43% reduction in peripheral vascular disease. Monitoring HbA1c levels is typically done through routine blood work in a clinical laboratory with a physician order. Treatment can involve a range of therapies, the most common of which are lifestyle management such as nutrition, physical activity and medication. Physicians will also employ various strategies to manage diabetes-associated comorbidities.

We believe that we provide significant, meaningful improvements in the measurable clinical outcomes of our members.

Peer-reviewed case study demonstrates improved blood glucose control (as measured by HbA1c) and associated cost savings for Livongo for Diabetes members

A scientific study presented at the 77th Annual ADA Scientific Sessions showed that Livongo improved HbA1c and drove cost savings for two large self-insured employers. This was a retrospective difference-in-difference cohort analysis across 3,474 members enrolled in Livongo for Diabetes and 12,065 non-Livongo users with diabetes, leveraging eligibility data, enrollment, population demographics, blood glucose values, and medical claims. The self-reported starting HbA1c was 7.8%. For the Livongo for Diabetes members, this decreased to 7.1% at three months after enrollment and was maintained at 6.9% at 12 months after enrollment. In addition, Livongo demonstrated a 5.8% reduction in medical spend in the Livongo member group, compared to the control group, totaling an average client savings of $83 PPPM in 2017 in this study. HbA1c is a clinical metric that reflects blood glucose control over the past three months. The ADA recommends a blood glucose level of 7.0% or lower. Every one percentage point reduction in an elevated HbA1c is associated with a savings of $110 PPPM.
Peer-reviewed study showed use of Livongo for Diabetes reduced medical costs by 21.9% and that each one day increase in membership was associated with a 0.11% reduction in medical spending

The Journal of Medical Economics published results on the use of the Livongo for Diabetes solution. The study objective was to investigate the financial impact of the Livongo diabetes management program using medical claims and real time blood glucose data. This was a retrospective multivariate, difference-in-difference cohort analysis and instrumental variables regression modeling that compared 2,261 people on our platform with 8,741 matched individuals with diabetes not on our platform. The results showed that people in this study using Livongo reduced their medical spend by 21.9%, the equivalent of $88 PPPM in 2018, including a 10.7% reduction in diabetes-related medical spending and a 24.6% reduction in office-based services. The one-day increase in Livongo membership resulted in a statistically significant 0.11% reduction in medical spending.

Peer-reviewed study showed improved blood glucose control for Livongo for Diabetes members

The Journal of Medical Internet Research published results from a study on our Livongo for Diabetes solution. The study set an objective to evaluate blood glucose data from 4,544 individuals with diabetes who were enrolled in the Livongo for Diabetes solution from October 2014 through December 2015. Members enrolled in Livongo for Diabetes experienced an average 18.4% decrease in the likelihood of having a day with hypoglycemia (blood glucose less than 70 mg/dL) and an average 16.4% decrease in hyperglycemia (blood glucose greater than 180 mg/dL) in months 2-12 compared to month one as the baseline. The biggest impact was seen on hyperglycemia for nonusers of insulin. These findings suggest that access to a connected glucose meter and CDE coaching is associated with a decrease in the likelihood of abnormal blood glucose excursions, which can lead to diabetes-related healthcare savings. Reducing the incidence of low blood glucose readings is important as these episodes can often lead to emergencies resulting in ER or hospital visits. Reducing the incidence of high blood glucose helps delay and prevent complications of diabetes over time.

Abstract presentation demonstrating clinically significant improvements in blood pressure control among Livongo for Hypertension members.

Livongo presented early pilot findings for the Livongo for Hypertension solution at the 68th Annual American College of Cardiology meeting in April 2019 that demonstrated that one-third of members with blood pressure, or BP, greater than or equal to 130/80 mmHg at the start of the program had their BP controlled to less than 130/80 mmHg within 6 weeks. On average, members checked their blood pressures 3.9 times per week and individuals with a starting BP greater than 140/90 mmHg (Stage 2 Hypertension) saw the largest drop in systolic blood pressure (10 mmHg reduction). A BP reading of greater than 130/80 mmHg is the generally recommended target BP reading for people with diabetes. And each 10 point drop in systolic blood pressure or 5 point drop in diastolic blood pressure is associated with a 22% reduction in coronary heart disease and a 41% reduction in stroke.

Our Technology

Our AI+AI engine is at the heart of the Livongo platform. As our members use our solutions more, they generate more data for our engine, which allows our feedback loop to grow more powerful.

Today, we aggregate dozens of data sets and combine them to interpret and extract the drivers of behavior change on a personal member-by-member level, just like an Amazon or Netflix experience which provide recommendations based on your prior usage. We deliver actionable, personalized, and timely recommendations through a broad set of applications to our members. And finally, using advanced data sciences tools, we observe and iterate in order to separate a true signal from the noise and turn it into something clear, actionable, and personal.
At the heart of our platform is a core set of four capabilities which we call **AI+AI: Aggregate, Interpret, Apply, and Iterate**:

**Aggregate**—We aggregate data and information from a variety of sources. Inputs come from our devices (i.e. blood pressure information from our smart, connected blood pressure cuff), human interactions with our coaches, member preference data, traditional data stores (like medical and pharmacy claims) as well as data from a diverse set of partners.

**Interpret**—To interpret the aggregated data, a set of critical steps occur that are driven by our unique team of data scientists, behavior specialists, and clinicians. We parse this data to determine the most important signals to feed into our AI+AI engine, extracting signals from the data we have aggregated and normalizing the signals to make them usable. They include:

- Dimensionalizing the signals to ascertain which ones are the most meaningful for a specific use and combining individual signals into Health Signals.
- Mapping Health Signals into what we already know about the people we are serving to deliver more impact.
- Interpreting the full range of signal-to-application possibilities through the lens of a set of clinical requirements and protocols to determine the right applications to deliver specific, timely health recommendations for a specific person.
- Building the most relevant healthcare messages and outputs to be delivered as well as mapping the personalized messages that will work for the specific individual members. This can include things like feedback from a member's blood glucose meter, live coaching via text or phone call, or coaching and monitoring team connections when needed.

**Apply**—Apply is the broad set of ways (modalities) that Health Signals get applied to certain individuals for a specific action and/or behavior support. This set of technologies includes our device applications (including our blood glucose meter and smart, connected blood pressure cuff), human applications (live coaching and warm transfers to pharmacists, care teams or providers) and web/text based modalities.

**Iterate**—Iterate describes the way that we bring Health Signals back into our AI+AI engine from the channels described in Apply. Our Iterate capability is unique in three key ways:

- **Contextual Iteration**: This describes our ability to identify and use the right type of data science “tool” (such as A/B testing, reinforcement learning, Bayesian approaches, neural networks, or other essential tools) for the right type of Health Signal we are iterating back into our AI+AI engine.
- **Real-time Iteration**: We iterate in real-time as members and other parts of the healthcare ecosystem are using the channels described in Apply.
- **Multifaceted Iteration**: We are iterating based on multiple facets of the experience people have with our AI+AI engine, including the type of message or Health Nudge to which they are responding, the day and time they are responding, and the specific offerings (e.g., waived medication co-payments or nutrition support) that are most useful in improving an individual’s health.

Other digital condition management programs are often focused on one or two conditions, providing a set of condition-specific applications and iterating the use of those applications. They often lack the in-depth data science capabilities to contextually iterate using the most appropriate data science methods to improve health. In contrast, our AI+AI engine is purpose-built to quickly develop core knowledge of each member and is designed for multi-condition use. That design element enables rapid scaling of impact for the member as we add new conditions to our platform. For example, the specific medical recommendations for applications and Health Signals to enable healthy behavior are obviously different for diabetes, hypertension, and prediabetes and weight management, but the signals about which person is receptive to what type of a message over which specific
device, the optimal time of day to reach a specific person, and even what type of personality they prefer in a live coaching session, are Health Signals that hold true across conditions.

We have intentionally constructed our AI+AI engine so we can scale to an unlimited number of chronic conditions and applications with an eye to consistent simplification of the healthcare experience for people with multiple chronic conditions. In simple terms, we look at ways to make the Livongo experiences seamless for multi-condition members by unifying devices, coaching, Health Signals, guidance, and enrollment when and where possible.

We are actively developing an Applied Health Signals marketplace in which we support and offer third-party applications so we can ensure each member has the specific applications most useful for them. We will also continue developing an open marketplace to allow third-party partners like digital medications, outside coaching solutions, and devices, such as Apple Watch, smartphone, Siri, smart speakers, to be connected to our solutions in a highly secured manner. Our recent technology partnership with Amazon Lex and Amazon Polly to power a voice-enabled cellular blood pressure monitoring system is an example of the different ways we can integrate our members’ everyday technology into our AI+AI engine. As we continue to develop Applied Health Signals partnerships, we will continuously aggregate new data into our AI+AI engine from partner devices (for example, continuous blood glucose monitoring data) and partner APIs (for example, nutritional data and activity tracker inputs).

We have achieved over 99.9% uptime for our members over the last 12 months. Systems are continually monitored for any signs of problems and preemptive action is taken when necessary. Encrypted backup files are transmitted over secure connections to a redundant server storage device in a secondary data center. Our data center facilities employ advanced measures to ensure physical integrity, including redundant power and cooling systems and advanced fire and flood prevention.

Our Clients

We build broad, long-term relationships with our clients by creating great experiences for the members we serve. The more members that use our platform, the more data we aggregate, and the more we are able to provide impactful, personalized insights to our members. For example, in 2018, our members logged over 19 million blood glucose checks using our blood glucose meter, and an average member interacted with our products over 250 times per year.

We started Livongo by selling to self-insured employers and have since expanded to partner with the country’s two largest PBM, and some of the country’s largest local and national health plans to sell to clients. We sell our solutions through our direct sales organization and through partner relationships to our clients, who are employers, health plans, government entities, and labor unions. As of December 31, 2017 and 2018 and March 31, 2019, we served 218, 413, and 679 clients, respectively, and as of December 31, 2018 and March 31, 2019, we had approximately 114,000 and 164,000 Livongo for Diabetes members, respectively. We define clients as business entities that have at least one active paid contract with us at the end of a particular period. Our clients make our solutions available to their employees and dependents, and we consider these direct users our members. We define our enrolled diabetes members as all employees and dependents that are enrolled in Livongo for Diabetes at the end of a given period. This number excludes: (i) employees or dependents of a client that has ceased using our solution, (ii) employees who no longer have an employment relationship with an active client, and their dependents, and (iii) employees and dependents who have not been active on or used our solution for a period of time as specified in the applicable client’s agreement, which is typically between four and six months.
Client Case Studies

Dean Foods

Dean Foods (NYSE: DF) is one of the nation’s leading food and beverage companies and is the largest dairy production company in the United States, with annual sales of $7.8 billion. Headquartered in Dallas, Texas, Dean Foods has more than 50 national, regional, and local dairy brands and private labels and also makes and distributes ice cream, cultured products, juices, teas, and bottled water.

Situation:

As a large self-insured employer, providing healthcare benefits to over 16,000 employees and their families is a top area of spend for Dean Foods. After analyzing the key drivers of healthcare costs, Dean Foods identified diabetes and other chronic conditions as a clear area of focus. In 2016, Dean Foods introduced Livongo as its strategic partner to empower its workforce and their families with chronic conditions to better manage chronic conditions, starting with diabetes.

Rollout:

To ensure a successful launch in January 2016, Livongo worked with Dean Foods to develop an optimized enrollment outreach plan leveraging multi-channel marketing programs, tailored communications, and integration with the client’s incentives platforms. These programs continue today and have been enhanced with Livongo’s optimized enrollment strategies to reinforce ongoing usage among current Livongo members and to enroll newly-eligible members. Over 32% of the eligible population at Dean Foods today participates in the Livongo for Diabetes program. Moreover, recognizing that over 70% of people with diabetes also have hypertension, in 2019 Dean Foods expanded its offerings for employees with chronic condition through Livongo to include the Livongo for Hypertension program.

Results:

Within the first year on the Livongo for Diabetes program, Dean Foods achieved a positive year 1 ROI of 1.4x on their investment in Livongo with gross medical cost savings of $70 PPPM through improved clinical outcomes and supply cost savings. In a cohort analysis, Livongo members reduced medical spend by 5% while the non-Livongo population increased costs by 7%. Key drivers included a 35% decrease in diabetes-related medical spending for Livongo members, whereas non-member spending did not move from the status quo, and Livongo member ER costs fell 34% while non-Livongo cohort costs increased by 6%. Moreover, after 1 year on the program, Dean Foods members gave Livongo a Net Promoter Score of +71, demonstrating industry-leading levels of member satisfaction. Finally, members are getting healthier as demonstrated by a sustained reduction of HbA1c levels of 0.7 points after 1 year on the program, and an average monthly reduction in days with a hypoglycemic reading of 28%.

Fortune Brands

Fortune Brands (NYSE: FBHS) is a home and security consumer products company built on industry-leading brands and products for kitchens, bathrooms, entryways, and outdoor living spaces. Headquartered in Deerfield, Illinois, Fortune Brands’ operating segments include Plumbing, Cabinets, and Doors & Security. Its trusted brands include Moen, Masterlock, Victoria & Albert, Therma-Tru, Fiberon, and many others. With $5.5 billion in annual sales, Fortune Brands’ mission is to fulfill the dreams of homeowners and help people feel more secure.

Situation:

In 2016, Fortune Brands knew that diabetes was a key driver of health care costs for its population and wanted to provide a holistic solution across multiple operating segments. As a holding company, they were
looking for a solution that could be seamlessly deployed across multiple divisions as well as the ability to track results at the division level. Livongo offered these capabilities and the Livongo for Diabetes program was launched in the fall of 2016.

**Rollout:**
Livongo worked with Fortune Brands to create a direct-mail campaign customized for seven different divisions. Although the content of the communications was standardized, Livongo incorporated unique registration codes for each division so that employees received mailers for their own division. To help drive enrollment, Livongo and Fortune Brands collaborated on several initiatives, including digital signage for use during open enrollment information sessions and promotion within the open enrollment platform. Today, over 32% of Fortune Brands’ eligible population participates in the Livongo for Diabetes program.

**Results:**
Within the first year of the Livongo for Diabetes program, Fortune Brands achieved a positive Year 1 ROI of 5.0x with $235 per member per month in estimated gross medical cost savings through improved clinical outcomes and supply cost savings. These savings came primarily from a 66% decrease in inpatient hospital spending and a 61% decrease in outpatient hospital spending. After two years on the program, Fortune Brands members gave Livongo a Net Promoter Score (NPS) of +73 and over 82% of survey respondents said they strongly agree that they feel better about their ability to manage their health. This is reflected by a sustained reduction of HbA1c, levels of 0.8 points after 2 years on the program and an average monthly reduction in days with a hypoglycemic reading of 54%.

**Jefferson Health**
Jefferson Health is a multi-state non-profit health system whose flagship hospital is Thomas Jefferson University Hospital in Philadelphia. The health system’s hospitals serve as the teaching hospitals of Thomas Jefferson University. Jefferson Health, including its academic institutions, has 2018 annualized revenues of $5.1 billion, more than 30,000 employees, 7,800 students, 6,600 physicians/practitioners and 4,400 faculty. Jefferson Health is one of the nation’s fastest growing academic health institutions. Over the last decade, Jefferson has grown from 3 hospitals to 14 and from 5 colleges to 11 with revenue growth from $2.2 billion to more than $5.1 billion, annualized.

**Situation:**
Hospitals and health systems, in addition to caring for our loved ones as medical care providers, are typically among the largest employers in their markets, and like most employers, managing rising healthcare costs and keeping employees healthy is a top priority, particularly for innovative health systems like Jefferson Health. In 2016, to attract and retain top talent and enable its employees with diabetes to better manage their chronic condition, one of the system’s hospitals located in Northeast Philadelphia, investigated a variety of diabetes management solutions for its employees. It opted to move forward with Livongo for Diabetes, driven by its industry-leading technology, ease of use, compelling clinical outcomes, and a quick and easy implementation process.

**Rollout:**
From the beginning, Jefferson Health was committed to leveraging Livongo’s best practices in implementation and member enrollment campaign strategy, not only to maximize success in the rollout, but also to limit the lift required by Jefferson Health’s small benefits team. To that end, Livongo worked collaboratively with Jefferson to develop a multi-channel enrollment and activation plan that included direct mail, email, HR announcements, newsletters, raffles, and text-based education programs across a sophisticated and personalized member journey framework. Enrollment began in March 2016 and as of April 2019, Jefferson Health has made Livongo available to all of its employees at every campus and hospital and practice.
Results:

Jefferson Health conducted its own statistical analysis of the impact of Livongo, utilizing a claims-based approach comparing Livongo and non-Livongo cohorts, and reported out the following results:

• Livongo members experienced large declines in ER visits, inpatient visits, average expenses, and HbA1c results.
• As a comparison, most of the same measures experienced increases in the same 12 month period for the non-Livongo diabetes cohort.
  • Average medical costs (excluding Rx and supplies costs) for the Livongo cohort were 23% lower for Livongo members. Specifically, costs for Livongo members declined by 17% while costs increased by 4.9% for the non-Livongo cohort.
  • Livongo members had a 28% reduction in ER visits.
  • Livongo members had a 39% reduction in inpatient visits.
  • The average HbA1c drop at 1-year for Livongo members was 1.4%.
• The gross medical cost savings were $195 PPPM translating into ROI of 3.2x for year 1 of its statistical analysis.

The results indicate that the Livongo program can reduce costs and improve patient outcomes. Moreover, the longer-term net benefits may be even larger considering overall costs and that outcomes had been getting worse for many of the non-Livongo people with diabetes.

In addition, Livongo has been achieving very high levels of member satisfaction since its launch at Jefferson Health. By the end of year one, Livongo delivered a net promoter score of +68.

Jefferson Health’s outcomes with respect to its use of Livongo may differ from the outcomes achieved by other entities.

Thomas Jefferson University has a revenue share interest in Livongo from a marketing fee.

WEA Trust

Based in Madison, Wisconsin, the not-for-profit WEA Trust provides group health insurance and administrative services to a diverse clientele of all Wisconsin public employees—school, municipal, county, and state. In 2018, WEA Trust acquired another Wisconsin-based health plan, Health Tradition, in order to serve both public and private employees in the state.

Situation:

As a high touch, innovation-driven alternative to large national carriers, providing scalable technology-enabled solutions that empower its 100,000 members to manage and improve their health outcomes has always been a top priority for WEA Trust. With the cost of supporting its members with chronic conditions steeply rising every year, WEA Trust has embarked on a major initiative to transform the way it supports its thousands of members with diabetes and other chronic diseases.

Rollout:

In 2016, WEA Trust began offering Livongo as a pilot to about 500 members with diabetes. Today, thanks to Livongo’s success during the pilot phase in driving clinical improvement, cost savings, and high member satisfaction, WEA Trust now offers Livongo to several thousand members with diabetes ultimately with over 800 enrolled users. “We decided to move forward with Livongo due to its focus on the consumer experience, the rapid results we saw related to its clinical impact and cost savings, and its ability to engage members,” says Dr. Tim Bartholow, Chief Medical Officer.
Livongo’s ability to cultivate engagement among members has led to significant, sustained clinical improvements for WEA Trust members. For the population that enrolled and persisted in using Livongo, one of the most noteworthy improvements is an average 0.9% absolute decrease in estimated HbA1c (eHbA1c) for members sustained over a two-year period after they begin engaging with the program. This long-term reduction in eHbA1c can have significant health effects, including reducing risks associated with diabetes, especially when seen in combination with hypertension, such as stroke, heart attacks, kidney disease, and peripheral vascular disease.

In addition, WEA Trust’s persisting Livongo members have experienced a 23% average monthly reduction in likelihood of days with a hypoglycemic reading. Reducing the occurrence of these low blood glucose episodes helps prevent avoidable and dramatically expensive visits to urgent care centers and the emergency department and can help prevent serious complications of diabetes such as confusion, loss of consciousness, and the less common complications of seizures and coma.

As clinical outcomes are improving at WEA Trust, healthcare spending trend is improved for a studied subgroup. A review of medical claims for 55 case-matched patient pairs one year after implementation of Livongo found a 12% reduction in total medical spending and a 14% reduction in diabetes-related medical spending. It also found a positive year one ROI of 4.5x with an average $170 in estimated gross medical cost savings per participant per month and an average $82 in estimated gross diabetes-related medical savings per participant per month. Moreover, members who have been on Livongo for at least two years have seen a 27% reduction in spending compared to the year prior to using Livongo, including a 51% reduction in emergency room spending and a 10% reduction in outpatient hospital spending. These findings did not achieve statistical significance given low numbers, but the trend is encouraging, especially as cost in the short run is linked to reduced unplanned care.

“Proper healthcare spending to achieve healthy employees is good for business, but it’s also good for members,” says Bartholow. “Healthcare is a top expense for most families, particularly for individuals managing often multiple chronic conditions. As our eligible members with chronic conditions better engage with chronic condition interventions like Livongo, they can improve their health outcomes and reduce their healthcare spending and we would predict are less absent from work. It’s a win-win.”

Our Culture and Employees

Joining Our Mission

People join Livongo as employees because of our mission: Livongo is empowering people with chronic conditions to live better and healthier lives. We fundamentally believe that our employees (we call ourselves Livongans) are integral to the success of the company. In support of our Livongans, we have built a work environment based on mutual trust, confidence, low ego, and inclusion which provides exceptional opportunities for growth and recognition. This focus on building a great company which centers on our people has accelerated our ability to fulfill our mission.

Our Cultural Values Drive a Healthy Company

We nurture a workplace culture that helps us make the right decisions, sets expectations on how we work together, and keeps us excited to do what we do every day. Our culture is defined by the acronym “PROPEL,” which highlights our core values:

- **People:** We treat our members and our teammates with empathy and respect. At Livongo we are committed to diversity and inclusion in recruiting, training, and how we work every day. We celebrate black heritage, women’s history, Asian Pacific American heritage, LGBTQ pride, Hispanic heritage, and Native American heritage and welcome and encourage diverse ideas and perspectives.
- **Results:** We are focused on delivering measurable improvement in the lives of people with chronic conditions. Since we are results-driven, we are proud to see our achievements in employee engagement.
and awards for an exceptional workplace. We measure engagement through an employee Net Promoter Score, or eNPS, which is +52, as of March 2019. Compared to industry benchmarks this eNPS score is considered ‘excellent’ and ranked at the top. In the last twelve months, Livongo received 15 workplace and innovation awards including 2018 Silicon Review’s 50 Best Workplaces of the Year, Mass Device’s 10 Hottest Medtech Startups of 2018, Silicon Valley Business Journal Fastest-Growing Private Companies Ranked #1, National Best and Brightest Workplace, and made the 2019 Crain’s Chicago Best Places to Work and Fortune Magazine’s Best Places to Work in Healthcare lists.

• **Originality:** We challenge the status quo and find innovative ways to create a great member experience. We are constantly looking for ways to improve and how we deliver that experience. That innovative experiential approach also applies to the culture we are building with our remote workforce. With 37.9% or over a third of Livongans as Remoties (that’s our term for remote employees), we are always imagining new ways to engage them and ensure they feel as much a part of the team as those in our offices.

• **Passion:** We are energized by our mission to empower people with chronic conditions to live better and healthier lives. Through our volunteering and fundraising for the Juvenile Diabetes Research Foundation, or JDRF, ADA, American Heart Association, and other local charities, we fundraise and give back to our communities every year, including nearly $800,000 in 2018. Last year at the 100-mile JDRF Ride to Cure Diabetes, our Team Livongo was one of the largest in JDRF history, with many employees cycling the full 100 miles to support diabetes research.

• **Excellence:** We aren’t satisfied with just being good enough – we strive to be great, we look to be exceptional. This approach of excellence guides how we designed our compensation and benefits program:
  
  • **Compensation Philosophy:** Compensation is aligned to relevant market pay rates and practices, with great attention to internal equity. Compensation reinforces high levels of performance, encourages skill development, and is intended to be fair and transparent.

  • **Benefits and Wellbeing:** At Livongo, we are passionate about making it easier for people with chronic conditions to manage their health. We provide a unique perspective to this mission because almost half of our employees live with a chronic condition themselves. As a benefits team, it is vital that we offer our employees, who empower our members every day, the tools they need to stay healthy and ultimately become the best version of themselves. As a company, Livongo consistently finds innovative ways to transform the healthcare experience for people with chronic conditions. Our benefits team looks to do the same. Our goal is to constantly reevaluate our benefits program to find new and creative ways for Livongans to live healthier lives. These include coverage for health and well-being, full diabetes reimbursement benefit, access to Livongo products and services, flexible paid time off, inclusion in company sponsored bike rides and walks, and mindfulness programs.

  • **Learning:** We move fast and adapt quickly. We listen to others, and we learn from our mistakes. From an onboarding process that is regularly recognized by new hires as “the best they’ve ever had in their careers” to a whole person approach to learning and development, we proudly embrace a culture of learning every day.

*Our People Connect to Livongo and Fulfill its Mission*

Ultimately, Livongans stay and thrive because we are deeply connected to our company, we go above and beyond to help fulfill our mission, and we never lose sight of our true passion: the people we serve. In keeping with our name, which stands for “living on the go,” we fit into the way our members live, put them in control of managing their condition, and give them an experience that they don’t just like, they love.
As of March 31, 2019, we had 471 full-time employees. None of our employees are represented by a labor union or covered by a collective bargaining agreement. We have not experienced any work stoppages and we consider our relationship with our employees to be good.

Sales and Marketing

Sales

We sell our solutions through our direct sales organization and through partner relationships. Our direct sales team is comprised of sales professionals organized into one of three categories: commercial sales, health services sales, or partnerships.

- **Commercial Sales Team**: Our commercial sales team is organized into three subgroups, identified by account type. The commercial sales team looks to identify opportunities within employers, health systems and government and labor organizations.

- **Health Services Sales Team**: Our health services sales team is organized into four subgroups: new business growth, existing business growth, governmental services (e.g., Medicare and Medicaid), and account management. The team targets and supports the following health plan segments: administrative service-only employers, fully-insured employers, Medicare, and Medicaid. We have developed an efficient sales process to map to health plan segments and show our unique value proposition.

- **Partnerships Team**: The partnerships team supports the commercial sales and health services teams by developing relationships with key industry participants, including benefit consultants, PBMs, and health plans. Importantly, our relationships with these participants often dramatically simplify and accelerate the contracting process given their existing contractual relationships with their clients.

Our contracts range in length, from one- to three-year terms and most renew automatically, subject to cancellation by either party upon 90 days notice prior to the renewal date. These agreements contain standard commercial terms and conditions, including payment terms, billing frequency, warranties and indemnification.

The sales cycle for our solutions from initial contact with a potential client to client launch is difficult to predict and varies widely by client, ranging from less than a month to almost a year. After an agreement with a client is entered into, we can typically complete client implementation in an average of eleven weeks. At the end of twelve months, our average enrollment rate for Livongo for Diabetes clients who launched enrollment in 2018 is 34% of the total recruitable individuals at a client. The average enrollment rate after twelve months for fully optimized clients who began enrollment in 2018 is over 47%.

Marketing

*Increasing Overall Brand Awareness*

Our company-level marketing strategy is focused on brand awareness and showing demonstrable return on investment for our existing clients, members, and deployed technologies. To achieve this, we publish results in scientific journals, engage with industry media and analysts, and pursue targeted marketing activities through both digital and non-digital channels. We anticipate increasing our marketing team headcount and are investing in programs designed to elevate our brand in the market. We also participate in a number of healthcare industry events to communicate our thought leadership and member outcomes.

*Enrolling Members*

Upon signing a contract with a client, we begin the marketing process to enroll members. We identify individuals within a given population that are eligible for the Livongo solution and work with the client on a communications strategy to enable member enrollment. For example, we may communicate with individuals
about the registration process via email. Time from signing to launch typically takes an average of eleven weeks. When the product is ready to launch, we then execute on three phases of our enrollment plan, each of which spans over about three months. We are continually focused on improving the client implementation process in order to maximize enrollment. For example, we have built key relationships with many health plans and PBMs to make data gathering easier as we identify eligible individuals within a given client population.

Research and Development

Our research and development organization is responsible for the design, architecture, operation and quality of our solutions. In addition to improving on our existing features, functionality and reliability, the engineering and product teams are also responsible for developing solutions for other chronic conditions beyond our current offerings. The two teams focused significant efforts in building a stronger platform for our diabetes, hypertension, pre-diabetes, and weight management solutions, including the launch of our integrated weight management solution on our platform. We plan to continue to dedicate significant resources to research and development.

Competition

The market for our solutions is competitive and characterized by rapid change. The competitive success of our solutions is contingent on our ability to provide superior solutions and a strong value proposition for all stakeholders in the member's health journey. We are pioneering a new category in healthcare, called Applied Health Signals, which is transforming the treatment of chronic conditions. We expect to face increasing competition, both from current competitors, who may be well-established and enjoy greater resources or other strategic advantages, as well as new entrants into our market, some of which may become significant competitors in the future. With the introduction of new technologies and market entrants, we expect the competitive environment to be and remain intense. We currently face competition from a range of companies, including Virta Health Corp., Omada Health, Inc., Glooko, Inc., Hello Heart Inc., Lyra Health, Inc., Onduo LLC, and Ginger.io, Inc.

Our main competitors fall into the following categories:

• private companies that offer point solutions for a single chronic condition instead of addressing the whole person;
• large enterprises who are focused on or may enter the healthcare industry, including initiatives and partnerships launched by these large companies, which may offer or develop products or services with features or benefits that overlap with our solutions; and
• digital health device manufacturers that facilitate the collection of data but offer limited interpretation, feedback or guidance.

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

• long-term outcomes;
• ease of use and convenience;
• price;
• greater name and brand recognition;
• longer operating histories;
• greater market penetration;
• larger and more established client relationships;
• larger sales forces and more established products;
• larger marketing budgets;
• access to significantly greater financial, human, technical and other resources;
• breadth, depth, and efficacy of offerings;
• quality and reliability of solutions; and
• employer, healthcare provider, government entity, and insurance carrier acceptance.

Although certain of our competitors enjoy greater resources, recognition, deeper customer relationships, larger existing customer bases, or more mature intellectual property portfolios, we believe we compete favorably across these factors. We create measurable, sustainable health improvements for members, our clients realize meaningful benefits and cost savings, and we enable healthcare providers to help improve the health of their patients even when they are outside the provider’s facility. As our market grows and rapidly changes, we expect it will continue to attract new companies, including smaller emerging companies, which could introduce new products and services, as well as players in the health system who may elect to develop their own offering and would have vast resources and relationships to leverage. In addition, we may expand into new markets, including international markets, and encounter additional competitors in such markets.

Intellectual Property

We believe that our intellectual property rights are valuable and important to our business. We rely on trademarks, patents, copyrights, trade secrets, license agreements, intellectual property assignment agreements, confidentiality procedures, non-disclosure agreements, and employee non-disclosure and invention assignment agreements to establish and protect our proprietary rights. Though we rely in part upon these legal and contractual protections, we believe that factors such as the skills and ingenuity of our employees and the functionality and frequent enhancements to our solutions are larger contributors to our success in the marketplaces.

As of March 31, 2019, we had 23 issued patents and one pending patent application in the United States. As of March 31, 2019, we held ten registered trademarks in the United States and also held four registered trademarks in foreign jurisdictions. In addition, we have registered domain names for websites that we use in our business, such as www.livongo.com and www.mystrength.com. We continually review our development efforts to assess the existence and patentability of new intellectual property.

We intend to pursue additional intellectual property protection to the extent we believe it will be beneficial and cost-effective. Despite our efforts to protect our intellectual property rights, they may not be respected in the future or may be invalidated, circumvented or challenged. In addition, the laws of various foreign countries where our products are produced may not protect our intellectual property rights to the same extent as laws in the United States. Our industry is characterized by the existence of a large number of patents and frequent claims and related litigation based on allegations of patent infringement or other violations of intellectual property rights. We believe that competitors will try to develop products that are similar to ours and that may infringe our intellectual property rights. Our competitors or other third-parties may also claim that our solutions infringe their intellectual property rights. In particular, some companies in our industry have extensive patent portfolios. From time to time, third parties have in the past and may in the future assert claims of infringement, misappropriation and other violations of intellectual property rights against us or our customers or partners, with whom our agreements may obligate us to indemnify against these claims. Successful claims of infringement by a third party could prevent us from offering certain products or features, require us to develop alternate, non-infringing technology, which could require significant time and during which we could be unable to continue to offer our affected products of solutions, require us to obtain a license, which may not be available on reasonable terms or at all, or force us to pay substantial damages, royalties or other fees. Moreover, our solutions incorporate software components licensed to the general public under open source software licenses. We obtain many components from software developed and released by contributors to independent open source components of our solutions. Open source licenses grant licensees broad permissions to use, copy, modify and redistribute our platform. As a result, open source development and license
practices can limit the value of our software copyright assets. For additional information, see the section titled “Risk Factors—Risks Related to our Business—Failure to protect or enforce our intellectual property rights could harm our business and results of operations.”

Regulatory Environment

As an Applied Health Signals company, offering solutions to empower people with chronic conditions to live better and healthier lives, we are required to comply with complex laws and regulations at both the state and federal level. Specifically, our solutions are subject to extensive regulation covering the privacy and security of personal health information. Because maintaining the safety of our devices and platform and keeping personal information secure and confidential are our most important responsibilities as a healthcare company, we have structured our operations with a focus on compliance. We continue to monitor and respond to changes in the regulatory landscape, however there can be no assurance that our operations will not be challenged or impacted by such changes.

HIPAA and Other Privacy and Security Requirements

There are numerous U.S. federal and state laws and regulations related to the privacy and security of personal information, particularly personal health information. HIPAA establishes privacy and security standards that limit the use and disclosure of PHI and requires the implementation of administrative, physical, and technical safeguards to ensure the confidentiality, integrity and availability of PHI. We are regulated as both a business associate and covered entity under HIPAA. In addition to HIPAA, some states in which we operate have laws that protect the privacy and security of sensitive and personal information, including health information. Such state laws can be similar to or even more protective than HIPAA, in which case we must comply with the more stringent law. As a result, it may be necessary to modify our planned operations in order to ensure we are in compliance with the stricter state laws.

In order to comply with the requirements of HIPAA and other similar state laws, we have implemented safeguards to protect our members’ PHI, including, restricting the use and sharing of PHI, limiting access to PHI to authorized personnel, maintaining training programs on how to protect PHI and ensuring business associate agreements and data sharing agreements are in place with the appropriate parties.

Data Protection and Breaches

In recent years, there have been a number of well-publicized data breaches involving the improper disclosure of individuals’ PHI or other personal information. Certain states have reacted to these breaches by enacting laws and regulations requiring holders of such information to take additional steps, including responding to breaches in certain timeframes, to safeguard the information. Pursuant to HIPAA, we are required to report breaches of unsecured PHI to our clients within 60 days of discovery of the breach. We are also required to notify HHS and, in cases involving large breaches, to the media.

In addition to the HIPAA compliance measures discussed above, we encrypt and back up data, maintain company-wide security awareness training, enter into business associate agreements with our partners, as well as ensure our partners have implemented physical security and safeguards at the data centers where our data is stored and conduct regular internal and external security audits. In 2016, we were audited and certified in SOC 2 by Plante Moran. Service Organization Controls, or SOC, are standards established by the American Institute of Certified Public Accountants for reporting on internal controls implemented within a service organization.

Other Healthcare Regulations

In addition to data privacy laws, our operations and arrangements with healthcare professionals, clients, and third-party payors may subject us to various federal and state healthcare laws and regulations, including without
limitation fraud and abuse laws, such as the federal Anti-Kickback Statute; civil and criminal false claims laws; physician transparency laws; and state laws regarding the corporate practice of medicine and fee-splitting prohibitions. These laws may impact, among other things, our sales and marketing operations, and our interactions with healthcare professionals. Although we have adopted policies and procedures designed to comply with these healthcare laws and regulations, failure to maintain compliance could result in significant penalties and require changes in our business operations.

**Compliance and Certifications**

Our blood glucose meter was cleared by the FDA by premarket notification per the requirements of Section 510(k) of the FDCA, allowing us to market our blood glucose meter in the United States. We have received a national provider identifier from the U.S. Centers for Medicare & Medicaid Services.

We voluntarily engage third-party security auditors to test our systems and controls at least annually against the most widely recognized security standards and regulations. The International Organization for Standardization, or ISO, has developed a series of standards for information security and related areas. We have received certification for ISO 13485:2016 (Medical Devices – Quality Management Systems).

In addition, we are accredited by the Diabetes Education Accreditation Program of the American Association of Diabetes Educators and by the Durable Medical Equipment, Prosthetics, Orthotics and Supplies Program of the Accreditation Commission for Health Care. We are also a validated member of Cerner Corporation's CareAware program, which assesses the compatibility and reliability of medical devices with certain offerings from Cerner Corporation.

**Our Facilities**

We are party to an office lease agreement effective through 2024 for approximately 30,019 square feet of office space that houses our corporate headquarters in Mountain View, California. We also lease additional office space around the world, including in other areas of California, Colorado and Illinois and in India. We believe our facilities are sufficient for our current needs and that, should it be needed, suitable additional or alternative space will be available to accommodate our operations.

**Legal Proceedings**

From time to time, we may be subject to legal proceedings and claims in the ordinary course of business, including patent, commercial, product liability, employment, class action, whistleblower and other litigation and claims, as well as governmental and other regulatory investigations and proceedings. In addition, third parties may from time to time assert claims against us in the form of letters and other communications. We are not currently a party to any legal proceedings that we believe to be material to our business or financial condition. The results of any future litigation cannot be predicted with certainty, and 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.
Executive Officers and Directors

The following table provides information regarding our executive officers and directors as of May 31, 2019:

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Position</th>
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<tbody>
<tr>
<td><strong>Executive Officers and Directors:</strong></td>
<td></td>
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<tr>
<td>Glen E. Tullman</td>
<td>59</td>
<td>Executive Chairman and Director</td>
</tr>
<tr>
<td>Jennifer Schneider</td>
<td>44</td>
<td>President</td>
</tr>
<tr>
<td>Zane Burke</td>
<td>53</td>
<td>Chief Executive Officer and Director</td>
</tr>
<tr>
<td>Lee Shapiro</td>
<td>63</td>
<td>Chief Financial Officer</td>
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<tr>
<td>James Pursley</td>
<td>39</td>
<td>Chief Commercial Officer</td>
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<tr>
<td><strong>Non-Employee Directors:</strong></td>
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<tr>
<td>Christopher Bischoff(1)</td>
<td>46</td>
<td>Director</td>
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<tr>
<td>Karen L. Daniel(1)</td>
<td>61</td>
<td>Director</td>
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<tr>
<td>Sandra Fenwick(1)(2)</td>
<td>68</td>
<td>Director</td>
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<tr>
<td>Philip D. Green(2)(3)</td>
<td>68</td>
<td>Director</td>
</tr>
<tr>
<td>Hemant Taneja(2)(3)</td>
<td>44</td>
<td>Director</td>
</tr>
</tbody>
</table>

(1) Member of our audit committee.
(2) Member of our compensation committee.
(3) Member of our nominating and corporate governance committee.

**Glen E. Tullman.** Mr. Tullman is a founder of our company and has served as our Executive Chairman since February 2019 and previously served as our Chief Executive Officer from September 2014 to February 2019. Mr. Tullman has also served as one of our directors since August 2013. He co-founded 7WireVentures, an early-stage healthcare venture fund, and has served as a Managing Partner since January 2013. Previously, Mr. Tullman served as Chief Executive Officer and as a director of Allscripts Healthcare Solutions, Inc., or Allscripts Healthcare, a provider of practice management and electronic health record technology, from August 1997 to December 2012. He serves as a Chancellor to the International Board of the Juvenile Diabetes Research Foundation and on the board of directors of the American Diabetes Association. Mr. Tullman holds a B.A. in Economics from Bucknell University and an advanced degree in Social Anthropology from St. Antony’s College, University of Oxford. We believe that Mr. Tullman is qualified to serve on our board of directors because of his extensive experience in the healthcare industry and because of the perspective and expertise that he brings as our Executive Chairman.

**Jennifer Schneider.** Dr. Schneider has served as our President since December 2018 and previously served as our Chief Medical Officer from September 2015 to December 2018. Prior to joining us, she served in various executive roles at Castlight Health, Inc., a healthcare care navigation company, from May 2010 to September 2015, most recently as Chief Medical Officer from November 2014 to September 2015 and as Vice President, Strategic Analytics from September 2013 to October 2014. Dr. Schneider holds a B.A. in Biology from College of the Holy Cross, an M.A. in Health Services Research from Stanford University and an M.D. from Johns Hopkins University.

**Zane Burke.** Mr. Burke has served as our Chief Executive Officer since February 2019 and as one of our directors since April 2019. Prior to joining us, he served in various executive roles at Cerner Corporation, a provider of health information technology solutions, services, devices and hardware, from September 1996 to November 2018, most recently as President from September 2013 until November 2018 and Executive Vice President – Client Organization from July 2011 to September 2013. Mr. Burke holds a B.S. in Accounting and a
Masters of Accountancy from Kansas State University. He is a certified public accountant, but no longer keeps an active license. Additionally, Mr. Burke serves on the Board of the Truman Medical Center, the Board of the College of Healthcare Information Management Executives and the Kansas State University School of Business Advisory Council. We believe that Mr. Burke is qualified to serve on our board of directors because of his background in overseeing public healthcare companies and because of the perspective and expertise that he brings as our chief executive officer.

Lee Shapiro. Mr. Shapiro has served as our Chief Financial Officer since December 2018. Mr. Shapiro served as a director from August 2013 until April 2019. He co-founded 7WireVentures with Mr. Tullman and has served as a Managing Partner since June 2013. Mr. Shapiro joined Allscripts Healthcare in April 2000 and served as President from April 2002 to December 2012. He currently serves as a director of Tivity Health, Inc., a provider of fitness and health improvement programs and Medidata Solutions, Inc., a provider of software as a service solutions for clinical trials. He also serves as a director of some of the 7WireVentures portfolio companies. He serves on the National Board of the American Heart Association and the advisory board of the Gastro-Intestinal Research Foundation. Mr. Shapiro holds a B.S. in Accountancy from the University of Illinois Urbana-Champaign and a J.D. from The University of Chicago Law School.

James Pursley. Mr. Pursley has served as our Chief Commercial Officer since April 2014. Prior to joining us, he served in various executive roles at Care Innovations from January 2011 to April 2014, most recently as Vice President, Sales and Marketing from August 2012 to April 2014. Mr. Pursley holds a B.S. in Management Sciences and Information Systems from Pennsylvania State University and an M.B.A. from the Kellogg School of Management at Northwestern University.

Non-Employee Directors

Christopher Bischoff. Mr. Bischoff has served as one of our directors since April 2018. He has served as Senior Investment Director at Kinnevik AB, a Swedish investment company, since October 2013. Mr. Bischoff previously served as a Managing Director and Head of European Media and Internet at Goldman Sachs, an investment bank and financial services company, from April 2001 to September 2013. He currently serves as a member of the board of directors of several privately-held companies. Mr. Bischoff holds a B.A. in History from the University of Bristol and an M.B.A. from INSEAD. We believe Mr. Bischoff is qualified to serve as a member of our board of directors based on his experience as a director of technology companies and his background in the investment banking industry, including his experience with investments in healthcare and technology companies.

Karen L. Daniel. Ms. Daniel has served as a member of our directors since May 2019. She has been a private investor since August 2018. Ms. Daniel was previously with Black & Veatch Corporation, an engineering and construction company, where she served as Chief Financial Officer from January 2000 until her retirement in July 2018. She currently serves as member of the board of directors of Commerce Bancshares, Inc., a bank holding company, and Snap-on Incorporated, a manufacturer and marketer of high-end tools and equipment for professional use. She holds a B.S. in Accounting from Northwest Missouri State University and an M.S. in Accounting from the University of Missouri-Kansas City. We believe Ms. Daniel is qualified to serve on our board of directors based on her significant executive operational experience and her deep understanding of finance, financial reporting, strategy, and operations.

Sandra Fenwick. Ms. Fenwick has served as one of our directors since April 2019. Ms. Fenwick has served as the Chief Executive Officer of Boston Children’s Hospital since 2013. She previously served as the Chief Operating Officer and President of Boston Children’s Hospital. Ms. Fenwick currently serves on the boards of directors of several privately held companies, including the Wyss Institute for Biologically Inspired Engineering at Harvard University, Inc., Children’s Hospital Association, Inc., CRICO Ltd. (Cayman), and Massachusetts Digital Health Council. Ms. Fenwick holds a B.S. in Biology and Chemistry from Simmons College and an M.P.H. in Health Services Administration and Epidemiology from the University of Texas School of Public
Health. We believe Ms. Fenwick is qualified to serve on our board of directors based on her extensive experience as a director of healthcare companies and her background in the healthcare industry.

Philip D. Green. Mr. Green has served as one of our directors since September 2016. He has served as President of PDG Consulting, LLC, a healthcare IT consulting company since November 2008. From July 2006 to November 2008, Mr. Green served as President, Strategic Business Initiatives, at the University of Pittsburgh Medical Center. He previously served as a partner at the law firms of Gardner Carton & Douglas, LLP, Akin, Gump, Strauss, Hauer & Feld, LLP, Green, Stewart, Farber & Anderson, P.C., Drinker Biddle & Reath, LLP, and Schwall, Donnenfeld, Bray & Silbert, P.C. Mr. Green holds a B.S. in Urban Studies from the University of Pennsylvania and a J.D. from the George Washington University Law School. We believe Mr. Green is qualified to serve as a member of our board of directors based on his extensive business expertise, including his prior executive level leadership, and his experience working with healthcare and technology companies.

Hemant Taneja. Mr. Taneja has served as one of our directors since April 2014. He has served as a Managing Director at General Catalyst, a venture capital firm, since September 2007. Mr. Taneja serves on the board of directors of several privately-held companies. Mr. Taneja is a graduate of the Massachusetts Institute of Technology, earning an M.S. in Operations Research, an M.Eng. in Electrical Engineering & Computer Science, a B.S. in Mathematics, a B.S. in Electrical Engineering & Computer Science, and a B.S. in Biology & Biomedical Engineering. We believe Mr. Taneja is qualified to serve as a member of our board of directors based on his experience as a director of and as an investor in multiple technology and healthcare companies.

Each executive officer serves at the discretion of our board of directors and holds office until his or her successor is duly elected and qualified or until his or her earlier resignation or removal.

Family Relationships
There are no family relationships among any of our directors or executive officers.

Code of Business Conduct and Ethics
Our board of directors has adopted a code of business conduct and ethics that will apply to all of our employees, officers, and directors, including our Executive Chairman, Chief Executive Officer, Chief Financial Officer, and other executive and senior officers. The full text of our code of business conduct and ethics will be posted on the investor relations page on our website. We intend to disclose any amendments to our code of business conduct and ethics, or waivers of its requirements, on our website or in filings under the Exchange Act.

Board of Directors
Our business and affairs are managed under the direction of our board of directors. Our board of directors consists of seven directors, five of whom qualify as “independent” under the listing standards of Nasdaq.

Our fourth amended and restated voting agreement will terminate and the provisions of our current certificate of incorporation by which our directors were elected will be amended and restated in connection with this offering.

After the completion of this offering, the number of directors will be fixed by our board of directors, subject to the terms of our amended and restated certificate of incorporation and amended and restated bylaws that will become effective immediately prior to the completion of this offering. Each of our current directors will continue to serve as directors until the election and qualification of his or her successor, or until his or her earlier death, resignation or removal.
Classified Board of Directors

We intend to adopt an amended and restated certificate of incorporation that will become effective immediately prior to the completion of this offering. Our amended and restated certificate of incorporation will provide that, immediately after the completion of this offering, our board of directors will be divided into three classes with staggered three-year terms. Only one class of directors will be elected at each annual meeting of stockholders, with the other classes continuing for the remainder of their respective three-year terms. Our current directors will be divided among the three classes as follows:

- the Class I directors will be Ms. Fenwick and Mr. Bischoff, and their terms will expire at the annual meeting of stockholders to be held in 2020;
- the Class II directors will be Ms. Daniel and Messrs. Taneja and Green, and their terms will expire at the annual meeting of stockholders to be held in 2021; and
- the Class III directors will be Messrs. Burke and Tullman, and their terms will expire at the annual meeting of stockholders to be held in 2022.

Each director’s term will continue until the election and qualification of his or her successor, or until his or her earlier death, resignation or removal. Any increase or decrease in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the total number of our directors.

This classification of our board of directors may have the effect of delaying or preventing changes in control of our company.

Director Independence

Our board of directors has undertaken a review of the independence of each director. Based on information provided by each director concerning his background, employment, and affiliations, our board of directors has determined that Mses. Daniel and Fenwick and Messrs. Bischoff, Green, and Taneja do not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is “independent” as that term is defined under the listing standards of Nasdaq. In making these determinations, our board of directors considered the current and prior relationships that each non-employee director has with our company and all other facts and circumstances our board of directors deemed relevant in determining their independence, including the beneficial ownership of our capital stock by each non-employee director, and the transactions involving them described in the section titled “Certain Relationships and Related Party Transactions.”

Lead Independent Director

Our board of directors has appointed Mr. Green to serve as our Lead Independent Director. As Lead Independent Director, Mr. Green will preside at all meetings of the board of directors at which the Executive Chairman is not present, preside over executive sessions of our independent directors, serve as a liaison between our Executive Chairman and our independent directors, and perform such additional duties as our board of directors may otherwise determine and delegate.

Committees of the Board of Directors

Our board of directors has established an audit committee, a compensation committee, and a nominating and corporate governance committee. The composition and responsibilities of each of the committees of our board of directors is described below. Members will serve on these committees until their resignation or until as otherwise determined by our board of directors.
**Audit Committee**

Our audit committee consists of Mses. Daniel and Fenwick and Mr. Bischoff, with Ms. Daniel serving as chair, each of whom meets the requirements for independence under the listing standards of Nasdaq and SEC rules and regulations. Each member of our audit committee also meets the financial literacy and sophistication requirements of the listing standards of Nasdaq. In addition, our board of directors has determined that Mr. Bischoff is an audit committee financial expert within the meaning of Item 407(d) of Regulation S-K under the Securities Act. Following the completion of this offering, our audit committee will be responsible for, among other things:

- selecting a qualified firm to serve as the independent registered public accounting firm to audit our financial statements;
- helping to ensure the independence and overseeing performance of the independent registered public accounting firm;
- reviewing and discussing the scope and results of the audit with the independent registered public accounting firm, and reviewing, with management and the independent registered public accounting firm, our interim and year-end operating results;
- reviewing our financial statements and our critical accounting policies and estimates;
- reviewing the adequacy and effectiveness of our internal controls;
- developing procedures for employees to submit concerns anonymously about questionable accounting, internal accounting controls, or audit matters;
- overseeing our policies on risk assessment and risk management;
- overseeing compliance with our code of business conduct and ethics;
- reviewing related party transactions; and
- pre-approving all audit and all permissible non-audit services, other than de minimis non-audit services, to be performed by the independent registered public accounting firm.

Our audit committee will operate under a written charter, to be effective prior to the completion of this offering, that satisfies the applicable rules and regulations of the SEC and the listing standards of Nasdaq.

**Compensation Committee**

Our compensation committee consists of Messrs. Taneja and Green and Ms. Fenwick, with Mr. Taneja serving as chair, each of whom meets the requirements for independence under the listing standards of Nasdaq and SEC rules and regulations. Each member of the compensation committee is also a non-employee director, as defined pursuant to Rule 16b-3 promulgated under the Exchange Act, or Rule 16b-3. Following the completion of this offering, our compensation committee will be responsible for, among other things:

- reviewing, approving, and determining, or making recommendations to our board of directors regarding, the compensation of our executive officers;
- administering our equity compensation plans;
- reviewing and approving and making recommendations to our board of directors regarding incentive compensation and equity compensation plans;
- establishing and reviewing general policies relating to compensation and benefits of our employees; and
- making recommendations regarding non-employee director compensation to our full board of directors.
Our compensation committee will operate under a written charter, to be effective prior to the completion of this offering, that satisfies the applicable rules and regulations of the SEC and the listing standards of Nasdaq.

Nominating and Corporate Governance Committee

Our nominating and corporate governance committee will consist of Messrs. Green and Taneja, with Mr. Green serving as chair, each of whom meets the requirements for independence under the listing standards of Nasdaq and SEC rules and regulations. Following the completion of this offering, our nominating and corporate governance committee will be responsible for, among other things:

• identifying, evaluating and selecting, or making recommendations to our board of directors regarding, nominees for election to our board of directors and its committees;
• evaluating the performance of our board of directors and of individual directors;
• considering and making recommendations to our board of directors regarding the composition of our board of directors and its committees;
• reviewing developments in corporate governance practices;
• evaluating the adequacy of our corporate governance practices and reporting;
• approving our committee charters;
• overseeing compliance with our code of business conduct and ethics;
• contributing to succession planning;
• reviewing actual and potential conflicts of interest of our directors and officers other than related party transactions reviewed by our audit committee; and
• developing and making recommendations to our board of directors regarding corporate governance guidelines and matters.

Our nominating and corporate governance committee will operate under a written charter, to be effective prior to the completion of this offering, that satisfies the applicable listing standards of Nasdaq.

Compensation Committee Interlocks and Insider Participation

Mr. Shapiro has served as our Chief Financial Officer since December 2018 and was a member of our compensation committee from August 2013 until his resignation in April 2019. None of the other members of our compensation committee is, or was during the last fiscal year, an officer or employee of our company. None of our executive officers currently serves, or in the past year has served, as a member of the board of directors or compensation committee (or other board committee performing equivalent functions) of any entity that has one or more executive officers serving on our board of directors or compensation committee.

Non-Employee Director Compensation

Our employee directors, Messrs. Tullman and Burke, have not received any compensation as directors. Mr. Shapiro, who previously served as an employee director until April 2019, also did not receive any compensation as a director.

Prior to this offering, we did not have a formal policy with respect to compensation payable to our non-employee directors for service as directors. From time to time, we have granted equity awards to certain non-employee directors to entice them to join our board of directors and for their continued service on our board of directors. From time to time, we have also committed to provide stipends of $2,500 to certain non-employee directors on a per-meeting attended basis. We also have reimbursed our directors for expenses associated with attending meetings of our board of directors and committees of our board of directors. During 2018, our non-employee directors did not receive any cash compensation for their services as directors or as board committee members. We anticipate adopting a formal compensation policy for our non-employee directors to provide cash and equity compensation to them following the completion of this offering.
The following table provides information regarding compensation of our non-employee directors for service as directors, for the year ended December 31, 2018.

<table>
<thead>
<tr>
<th>Name</th>
<th>Option Awards ($)</th>
<th>Total ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christopher Bischoff</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Lynne Chou O’Keefe(1)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Karen L. Daniel(2)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Sandra Fenwick(3)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Phillip D. Green</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Hemant Taneja</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>William Taranto(4)</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

(1) Ms. Chou O’Keefe resigned from our board of directors effective as of April 1, 2019.
(2) Ms. Daniel was appointed to our board of directors effective as of May 31, 2019.
(3) Ms. Fenwick was appointed to our board of directors effective as of April 27, 2019.
(4) Mr. Taranto resigned from our board of directors effective as of April 27, 2019.

The following table lists all outstanding equity awards held by non-employee directors as of December 31, 2018:

<table>
<thead>
<tr>
<th>Name</th>
<th>Grant Date</th>
<th>Options Outstanding</th>
<th>Option Exercise Price Per Share</th>
<th>Option Expiration Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christopher Bischoff</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Lynne Chou O’Keefe(1)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Karen L. Daniel(2)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Sandra Fenwick(3)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Philip D. Green</td>
<td>11/16/2016(4)</td>
<td>50,000</td>
<td>$1.38</td>
<td>11/15/2026</td>
</tr>
<tr>
<td></td>
<td>12/4/2017(5)</td>
<td>50,000</td>
<td>$1.88</td>
<td>12/3/2027</td>
</tr>
<tr>
<td>Hemant Taneja</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>William Taranto(6)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

(1) Ms. Chou O’Keefe resigned from our board of directors effective as of April 1, 2019.
(2) Ms. Daniel was appointed to our board of directors effective as of May 31, 2019.
(3) Ms. Fenwick was appointed to our board of directors effective as of April 27, 2019.
(4) The shares underlying these options vest as to 1/4th of the total shares on September 6, 2017, with 1/48th of the total shares vesting on the monthly anniversary thereafter, subject to continued service with us.
(5) The shares underlying these options vest as to 1/4th of the total shares on December 4, 2018, with 1/48th of the total shares vesting on the monthly anniversary thereafter, subject to continued service with us.
(6) Mr. Taranto resigned from our board of directors effective as of April 27, 2019.

In April 2019, our board of directors granted Ms. Fenwick an RSU award of 75,000 shares of our common stock. One half of the RSUs will vest on May 25, 2020, and, thereafter, one-fourth of the remaining unvested shares subject to the RSU will vest in quarterly installments on August 25, 2020, November 25, 2020, February 25, 2021, and May 25, 2021, subject to continued service with us.

In May 2019, our board of directors granted Mr. Green an RSU award of 75,000 shares of our common stock. One half of the RSUs will vest on May 25, 2020, and, thereafter, one-fourth of the remaining unvested shares subject to the RSU will vest in quarterly installments on August 25, 2020, November 25, 2020, February 25, 2021, and May 25, 2021, subject to continued service with us.

In June 2019, our board of directors granted Ms. Daniel an RSU award of 75,000 shares of our common stock. One half of the RSUs will vest on August 25, 2020, and, thereafter, one-fourth of the remaining unvested shares subject to the RSU will vest in quarterly installments on November 25, 2020, February 25, 2021, May 25, 2021, and August 25, 2021, subject to continued service with us.
EXECUTIVE COMPENSATION

Summary Compensation Table

Our named executive officers, consisting of our principal executive officer and the next two most highly compensated individuals who were serving as our executive officers as of December 31, 2018, were:

• Glen Tullman, our Executive Chairman and former Chief Executive Officer;
• Jennifer Schneider, our President; and
• James Pursley, our Chief Commercial Officer.

We refer to these individuals as our named executive officers.

Mr. Tullman was our Chief Executive Officer during 2018. In February 2019, we appointed Zane Burke as our Chief Executive Officer and Mr. Tullman transitioned to Executive Chairman of our company.

<table>
<thead>
<tr>
<th>Name and Principal Position</th>
<th>Year</th>
<th>Salary ($)</th>
<th>Bonus ($)</th>
<th>Stock Awards ($)(^{(1)})</th>
<th>Option Awards ($)(^{(1)})</th>
<th>Non-Equity Incentive Plan Compensation ($)</th>
<th>All Other Compensation ($)</th>
<th>Total ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glen Tullman(^{(2)}) Executive Chairman and former Chief Executive Officer</td>
<td>2018</td>
<td>405,000</td>
<td>347,927(^{(a)})</td>
<td>—</td>
<td>2,357,200</td>
<td>—</td>
<td>7,406(^{(4)})</td>
<td>3,117,533</td>
</tr>
<tr>
<td>Jennifer Schneider President</td>
<td>2018</td>
<td>332,500</td>
<td>302,304(^{(5)})</td>
<td>329,000</td>
<td>245,640</td>
<td>4,000(^{(6)})</td>
<td>1,252(^{(7)})</td>
<td>1,214,696</td>
</tr>
<tr>
<td>James Pursley Chief Commercial Officer</td>
<td>2018</td>
<td>260,000</td>
<td>75,000(^{(8)})</td>
<td>—</td>
<td>163,760</td>
<td>244,118(^{(9)})</td>
<td>1,252(^{(7)})</td>
<td>744,130</td>
</tr>
</tbody>
</table>

\(^{(1)}\) The amounts reported represent the aggregate grant-date fair value of the stock options and/or RSUs awarded to the named executive officer in 2018, calculated in accordance with FASB, ASC Topic 718, *Stock-Based Compensation*. Such grant date fair value does not take into account any estimated forfeitures related to service-vesting conditions. The assumptions used in determining the grant date fair value of the stock options and RSUs reported in these columns are set forth in the notes to our audited consolidated financial statements included elsewhere in this prospectus. These amounts do not reflect the actual economic value that will be realized by the named executive officer upon the vesting of the stock options and/or RSUs, the exercise of the stock options or the sale of the common stock underlying such stock options and/or RSUs.

\(^{(2)}\) Mr. Tullman serves on our board of directors but is not paid additional compensation for such service.

\(^{(3)}\) The amount reported includes (i) a bonus of $157,500 that was earned in 2017 and paid in 2018 and (ii) a bonus of $190,427 that was earned in 2018 and paid in 2019.

\(^{(4)}\) The amount reported consists of (i) matching 401(k) contributions for Mr. Tullman, (ii) amounts paid on behalf of Mr. Tullman for basic life insurance, (iii) amounts paid on behalf of Mr. Tullman for his YPO membership, and (iv) use of Livongo for Diabetes for Sam Tullman, Mr. Tullman’s son, who was diagnosed with diabetes at age 8.

\(^{(5)}\) The amount reported includes (i) a bonus of $150,000 that was earned in 2017 and paid in 2018 and (ii) a bonus of $152,304 that was earned in 2018 and paid in 2019.

\(^{(6)}\) The amount reported consists of employee referral bonuses.

\(^{(7)}\) The amount reported consists of (i) matching 401(k) contributions for the named executive officer and (ii) amounts paid on behalf of the named executive officer for basic life insurance.

\(^{(8)}\) The amount reported includes (i) a bonus of $50,000 that was earned in 2017 and paid in 2018 and (ii) a bonus of $25,000 that was earned in 2018 and paid in 2019.

\(^{(9)}\) The amount reported represents the amount earned in 2018 pursuant to our 2018 Variable Compensation Plan.
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Named Executive Officer Employment Agreements

Glen Tullman

We entered into an employment agreement with Glen Tullman, our Executive Chairman, in April 2014. Mr. Tullman’s base salary is $425,000 and annual target bonus opportunity is 50% of his base salary. Pursuant to Mr. Tullman’s employment agreement, our Board or a committee of the Board may increase Mr. Tullman’s salary from time to time.

Mr. Tullman’s employment agreement provides for no specific term and Mr. Tullman is an at-will employee. His employment agreement provides that we or Mr. Tullman may terminate his employment at any time for any reason, provided that we provide Mr. Tullman 30 days prior written notice in the event that we terminate Mr. Tullman’s employment without cause, and Mr. Tullman provides us 30 days prior written notice with respect to any resignation by him. If Mr. Tullman’s employment is terminated by us without cause (and other than due to his death or disability) or by him for good reason, then, subject to a release of claims in our favor, and Mr. Tullman’s continued compliance with the restrictive covenants applicable to him (including certain confidentiality obligations, and a covenant not to solicit our service providers, customers, and potential customers for a period of 1 year or compete with us for a period of 6 months, in each case after the date his employment terminates), Mr. Tullman will receive the following severance benefits:

• If such termination occurs other than during the period beginning on the date of a Sale of the Company through the one-year anniversary of the Sale of the Company (the “Sale Period”), then, Mr. Tullman will receive (i) an amount equal to 50% of his base salary, and (ii) continuation of enrollment in our health and/or dental benefit plans for a period of up to 6 months following the termination of his employment, provided that Mr. Tullman will be required to contribute only the amount he would be required were he still employed by us; or

• If such termination occurs during the Sale Period or in connection with a “non-sale termination,” then, Mr. Tullman will receive 1.5 times (i) his base salary and (ii) his target performance bonus.

For purposes of the employment agreement between us and Mr. Tullman, and the foregoing description, the following terms will have the following meanings:

The term “cause” generally means (i) Mr. Tullman’s willful failure, disregard or refusal to perform his duties and obligations under his employment agreement; (ii) his conviction of, or entry of a nolo contendere plea to, a crime or offense (A) constituting a felony of involving fraud or moral turpitude, or (B) involving our property that results in a material loss to us; (iii) any act of fraud or embezzlement with respect to us or our business relations, or his violation of any law materially and demonstrably injurious to our operations, financial condition, or reputation; (iv) his material breach of any agreement with us; and (v) his willful failure or refusal to follow our board of director’s reasonable and lawful instructions consistent with his employment agreement; provided that in the case of (i), (iv), and (v), he will have a 30-day period to cure the act or omission to the extent capable of cure.

The term “good reason” generally means the occurrence of any of the following events: (i) our failure to meet our obligations in any material respect under Mr. Tullman’s employment agreement, including (x) a reduction in his base salary or target performance bonus percentage without his written consent or (y) any failure to pay his base salary or earned and owed performance bonus (other than, in the case of clause (y), inadvertent failures to pay de minimis amounts, immediately made by Company upon notice); (ii) a (x) material diminution in or other substantial adverse alteration in the nature or scope of his authority, duties and responsibilities under his employment agreement or (y) change in his reporting lines such that he no longer reports to our board of directors; or (iii) his having been asked to relocate his principal place of business to a location that is more than 50 miles from our offices located in Chicago, Illinois. However, good reason will not be deemed satisfied unless Mr. Tullman gives us written notice of the event or condition within 60 days after the event or condition first occurs, provides us with a 30-day cure period during which the event or condition has not been cured, and terminates his employment within 30 days following the expiration of our cure period.
The term “non-sale termination” generally means a termination of Mr. Tullman’s employment if (i) a Sale of the Company occurs, (ii) Mr. Tullman’s employment is terminated by us without cause or by him for good reason, in either case (x) on or after commencement of a transaction that, if consummated, would constitute a Sale of the Company and (y) prior to the date on which the Sale of the Company occurs, and (iii) it is reasonably demonstrated by Mr. Tullman that such termination of employment or events constituting good reason was (x) at the request of a third party who had taken steps reasonably calculated to effect the Sale of the Company or (y) otherwise arose in connection with or in anticipation of the Sale of the Company.

The term “Sale of the Company” generally means either: (a) a transaction or series of related transactions in which a person, or a group of related persons, acquires from our stockholders shares representing more than 50% of our outstanding voting power; or (b) a transaction that qualifies or would qualify as a deemed liquidation event under our Amended and Restated Certificate of Incorporation (notwithstanding any stockholder vote that would result in waiving the treatment of a transaction as a deemed liquidation event).

Jennifer Schneider

We entered into an employment agreement with Jennifer Schneider, our Chief Medical Officer, in September 2015. Ms. Schneider's base salary is $340,000 and annual target bonus opportunity is 50% of her base salary. Pursuant to Ms. Schneider's employment agreement, Ms. Schneider's base salary may be increased from time to time. Ms. Schneider's employment agreements provides, at our expense, for transportation to and from our Mountain View, California, office to her home on days she travels to our office.

Ms. Schneider's employment agreement provides for no specific term and Ms. Schneider is an at-will employee. Her employment agreement provides that we or Ms. Schneider may terminate her employment at any time for any reason, provided that we provide Ms. Schneider 30 days prior written notice in the event that we terminate Ms. Schneider's employment without cause, and Ms. Schneider provides us 30 days prior written notice with respect to any resignation by her. If Ms. Schneider's employment is terminated by us without cause (and other than due to her death or disability) or by her for good reason, then, subject to a release of claims in our favor, and Ms. Schneider's continued compliance with the restrictive covenants applicable to her (including certain confidentiality obligations and a covenant not to solicit our service providers, customers, and potential customers for a period of 1 year after the date her employment terminates), Ms. Schneider will receive 6 months of continued base salary severance following termination of her employment.

For purposes of the employment agreement between us and Ms. Schneider, and the foregoing description, the following terms will have the following meanings:

The term “cause” generally means (i) Ms. Schneider's willful failure, disregard or refusal to perform her duties and obligations under her employment agreement; (ii) her conviction of, or entry of a nolo contendere plea to, a crime or offense (A) constituting a felony of involving fraud or moral turpitude, or (B) involving our property that results in a material loss to us; (iii) any act of fraud or embezzlement with respect to us or our business relations, or her violation of any law materially and demonstrably injurious to our operations or financial condition; (iv) her material breach of any agreement with us; and (v) her willful failure or refusal to follow our Chief Executive Officer's reasonable and lawful instructions consistent with her employment agreement; provided that in the case of (i), (iv), and (v), she will have a 30-day period to cure the act or omission to the extent capable of cure.

The term “good reason” generally means the occurrence of any of the following events: (i) our failure to meet our obligations in any material respect under Ms. Schneider's employment agreement, including (x) a reduction in her base salary or target performance bonus percentage without her written consent or (y) any failure to pay her base salary or earned and owed performance bonus (other than, in the case of clause (y), inadvertent failures to pay de minimis amounts, immediately made by Company upon notice); (ii) a material diminution in or other substantial adverse alteration in the nature or scope of her authority, duties and responsibilities, including
any requirement that she report to any person or entity other than our Chief Executive Officer; or (iii) her having been asked to relocate her principal place of business to a location that is more than 30 miles from our offices located in Mountain View, California. However, good reason will not be deemed satisfied unless Ms. Schneider gives us written notice of the event or condition within 60 days after the event or condition first occurs, provides us with a 30-day cure period during which the event or condition has not been cured, and terminates her employment within 30 days following the expiration of our cure period.

James Pursley

We entered into an amended and restated employment agreement with James Pursley, our Chief Commercial Officer, in June 2019. Mr. Pursley’s base salary is $270,000 and annual target bonus opportunity is 100% of his base salary. Pursuant to Mr. Pursley’s amended and restated employment agreement, Mr. Pursley’s base salary may be increased from time to time by our board of directors or compensation committee.

Mr. Pursley’s amended and restated employment agreement provides for no specific term and Mr. Pursley is an at-will employee. His amended and restated employment agreement provides that we or Mr. Pursley may terminate his employment at any time for any reason, provided that we have requested that Mr. Pursley provides us 30 days prior written notice with respect to any resignation by him. If Mr. Pursley’s employment is terminated by us without cause (and other than due to his death or disability) or by him for good reason, then, subject to a release of claims in our favor, and Mr. Pursley’s continued compliance with the restrictive covenants applicable to him (including certain confidentiality obligations, and a covenant not to solicit our service providers, customers, and potential customers for a period of one year after the date his employment terminates), Mr. Pursley will receive six months of continued base salary severance in monthly installments following termination of his employment.

In addition, if any of the payments or benefits provided for under Mr. Pursley’s amended and restated employment agreement or otherwise payable to Mr. Pursley would constitute “parachute payments” within the meaning of Section 280G of the Code and could be subject to the related excise tax, Mr. Pursley will receive either full payment of such payments and benefits or such lesser amount that would result in no portion of the payments and benefits being subject to the excise tax, whichever results in the greater amount of after-tax benefits to him.

For purposes of the amended and restated employment agreement between us and Mr. Pursley, and the foregoing description, the following terms will have the following meanings:

The term “cause” generally means (i) Mr. Pursley’s willful failure, disregard or refusal to perform his duties and obligations under his amended and restated employment agreement; (ii) his conviction of, or entry of a nolo contendere plea to, a crime or offense (A) constituting a felony of involving fraud or moral turpitude, or (B) involving our property that results in a material loss to us; (iii) any act of fraud or embezzlement with respect to us or our business relations, or his violation of any law materially and demonstrably injurious to our operations or financial condition; (iv) his material breach of any agreement with us; and (v) his willful failure or refusal to follow our Chief Executive Officer’s reasonable and lawful instructions consistent with his amended and restated employment agreement; provided that in the case of (i), (iv), and (v), he will have a 30-day period to cure the act or omission to the extent capable of cure.

The term “good reason” generally means the occurrence of any of the following events: (i) our failure to meet our obligations in any material respect under Mr. Pursley’s amended and restated employment agreement, including (x) a material reduction in his base salary or target performance bonus percentage without his written consent or (y) any failure to pay his base salary or earned and owed performance bonus (other than, in the case of clause (y), inadvertent failures to pay timely immaterial amounts, immediately made by the Company upon notice); (ii) a material diminution in or other substantial adverse alteration in the nature or scope of his authority, duties and responsibilities, including any requirement that he report to any person or entity other than our Chief
Executive Officer; or (iii) his being required to relocate his principal place of business to a location that is more than 50 miles from our offices located in Chicago, Illinois. However, good reason will not be deemed satisfied unless Mr. Pursley gives us written notice of the event or condition within 60 days after the event or condition first occurs, provides us with a 30-day cure period during which the event or condition has not been cured, and terminates his employment within 30 days following the expiration of our cure period.

Chief Executive Officer Employment Agreement

Zane Burke

We entered into an employment agreement with Zane Burke, our Chief Executive Officer, in March 2019. Mr. Burke’s base salary is $350,000 and annual target bonus opportunity is 50% of his base salary. Pursuant to Mr. Burke’s employment agreement, our Board or a committee of the Board may increase Mr. Burke’s salary from time to time. His employment agreement also provides for the grant of a restricted stock award covering 982,301 shares of our common stock, which was granted to Mr. Burke in March 2019, as discussed further below.

Mr. Burke’s employment agreement provides for no specific term and Mr. Burke is an at-will employee. His employment agreement provides that we or Mr. Burke may terminate his employment at any time for any reason, provided that Mr. Burke provides us 30 days prior written notice with respect to any resignation by him. If Mr. Burke’s employment is terminated by us without cause (and other than due to his death or disability) or by him for good reason, then, subject to a release of claims in our favor, and Mr. Burke’s continued compliance with the restrictive covenants applicable to him (including certain confidentiality obligations, a covenant to not solicit our service providers and customers and a covenant not to compete with us, in each case for a period of 1 year after the date his service terminates), Mr. Burke will receive 9 months of continued base salary severance following termination of his employment.

For purposes of the employment agreement between us and Mr. Burke, and the foregoing description, the following terms will have the following meanings:

The term “cause” generally means (i) Mr. Burke’s willful failure, disregard or refusal to perform his duties and obligations under his employment agreement; (ii) his conviction of, or entry of a nolo contendere plea to, a crime or offense (A) constituting a felony of involving fraud or moral turpitude, or (B) involving our property that results in a material loss to us; (iii) any act of fraud or embezzlement with respect to us or our business relations, or his violation of any law materially and demonstrably injurious to our operations or financial condition; (iv) his material breach of any agreement with us; and (v) his willful failure or refusal to follow our Executive Chairman’s or board of director’s reasonable and lawful instructions consistent with his employment agreement; provided that in the case of (i), (iv), and (v), he will have a 30-day period to cure the act or omission to the extent capable of cure.

The term “good reason” generally means the occurrence of any of the following events: (i) our failure to meet our obligations in any material respect under Mr. Burke’s employment agreement, including (x) a reduction in his base salary or target performance bonus percentage without his prior written consent or (y) any failure to pay his base salary or earned and owed performance bonus (other than, in the case of clause (y), inadvertent failures to pay de minimis amounts, immediately made by Company upon notice); or (ii) a material diminution or other substantial adverse alteration in the nature or scope of his authority, duties and responsibilities, including any requirement that he report to any person or entity other than our Executive Chairman or board of directors. However, good reason will not be deemed satisfied unless Mr. Burke gives us written notice of the event or condition within 60 days after the event or condition first occurs, provides us with a 30-day cure period during which the event or condition has not been cured, and terminates his employment within 30 days following the expiration of our cure period.

In March 2019, we granted Mr. Burke an award of restricted stock covering 982,301 shares of our common stock under our 2014 Stock Incentive Plan and pursuant to the terms of a restricted stock award agreement.
thereunder, as subsequently amended in June 2019. Under the amended restricted stock award agreement, 25% of the shares subject to the award vested on the amendment date, and one-eighth of the shares subject to the award are scheduled to vest semi-annually following the one-year anniversary of the grant date of the restricted stock award. However, in the event that Mr. Burke ceases providing services to us as a result of his being terminated with cause prior to February 2020, then any and all shares that have vested as of such date will be forfeited to us immediately.

Additionally, if Mr. Burke’s employment is terminated by the Company without cause (as defined in his employment agreement), then subject to a release of claims in our favor, and Mr. Burke’s continued compliance with the restrictive covenants applicable to him (both as described above under his employment agreement), a number of additional shares subject to the award will accelerate vesting as follows:

• If such termination occurs within Mr. Burke’s first year of employment, the number of shares that will accelerate vesting will be equal to the number that would have vested under the award’s vesting schedule assuming Mr. Burke’s continued employment for an additional year following such termination; or

• If such termination occurs after Mr. Burke’s first year of employment, the number of shares that will accelerate vesting will be equal to the number that would have vested under the award’s vesting schedule assuming Mr. Burke’s continued employment for an additional two years following such termination.

Non-Equity Incentive Plan Awards

Mr. Pursley was eligible to earn commission-based incentive compensation in 2018. Under our 2018 variable compensation plan in which Mr. Pursley participated, a portion of the commissions would be earned based on the annual recurring revenue, or ARR, of certain new subscriptions for services under the diabetes program, and additional commissions may be earned based on actual revenue for up to the first 12 months of the applicable subscription. The commission rate varied (up to a specified maximum) based on the ARR applicable to the new subscriptions in a fiscal quarter compared to the participant’s quarterly ARR quota. In addition, certain of Mr. Pursley’s commissions earned in 2018 related to achieving specified enrollment levels in 2018 under certain new subscriptions for services under the diabetes program entered into in 2017. Under our 2017 variable compensation plan in which Mr. Pursley participated, a portion of the commissions was earned based on the estimated ARR of certain new subscriptions for Livongo for Diabetes services in 2017, and additional commissions were earned upon achieving specified levels of enrollment under those subscriptions during the first 12 months of the subscription. Mr. Pursley also earned commissions under the 2018 variable compensation plan based on certain new subscriptions for services under the hypertension program. The commission amount for these subscriptions was determined as a fixed amount for each sale achieved in the applicable quarter.

The total amount of Mr. Pursley’s commissions for 2018 under our variable compensation plans in which he participated is set forth in the Summary Compensation Table above, under the column titled “Non-Equity Incentive Plan Compensation.”
Outstanding Equity Awards at 2018 Year-End

The following table sets forth information regarding outstanding stock options held by our named executive officers as of December 31, 2018:

<table>
<thead>
<tr>
<th>Name</th>
<th>Option Awards</th>
<th>RSU Awards</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of Securities Underlying Options Exercisable (#)</td>
<td>Number of Securities Underlying Options Unexercisable (#)</td>
</tr>
<tr>
<td>Glen Tullman</td>
<td>940,050</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>843,904</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>908,595</td>
<td>60,574</td>
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<tr>
<td></td>
<td>539,467</td>
<td>755,255</td>
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<td></td>
<td>—</td>
<td>824,547</td>
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<td>—</td>
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</tr>
<tr>
<td></td>
<td>—</td>
<td>123,148</td>
</tr>
<tr>
<td>Jennifer Schneider</td>
<td>528,459</td>
<td>128,876</td>
</tr>
<tr>
<td></td>
<td>41,666</td>
<td>38,334</td>
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<td></td>
<td>18,750</td>
<td>131,250</td>
</tr>
<tr>
<td></td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>James Pursley</td>
<td>67,500</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>12,500</td>
<td>—</td>
</tr>
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<td></td>
<td>30,000</td>
<td>90,000</td>
</tr>
<tr>
<td></td>
<td>12,500</td>
<td>87,500</td>
</tr>
</tbody>
</table>

(1) Each of the outstanding equity awards was granted pursuant to our 2014 Plan, except for the option granted to Mr. Tullman on February 13, 2014, which was granted pursuant to our 2008 Plan.

(2) This amount reflects the fair market value of our common stock of $6.92 as of December 31, 2018 (the determination of the fair market value of our board of directors as of the most proximate date) multiplied by the amount shown in the column for the number of shares or units that have not vested.

(3) Each of the options held by Mr. Tullman vest in annual installments over four years, in each case subject to Mr. Tullman’s continued service with us through each applicable vesting date.

(4) Each of the options held by Mr. Tullman vest in monthly installments over four years with a 12-month vesting cliff, in each case subject to Mr. Tullman’s continued service with us through each applicable vesting date.

(5) Each of the options held by Mr. Tullman vest in monthly installments over four years following the grant date with a 12-month vesting cliff, provided that we must achieve a total market cap (or a Board-approved, third-party valuation of our company, if prior to our initial public offering) of at least $1.5 billion, before any vesting will occur under the option, in each case subject to Mr. Tullman’s continued service with us through each applicable vesting date.

(6) Each of the options held by Mr. Tullman vest in monthly installments over four years following the grant date with a 12-month vesting cliff, provided that we must achieve a total market cap (or a Board-approved, third-party valuation of our company, if prior to our initial public offering) of at least $2.0 billion, before any vesting will occur under the option, in each case subject to Mr. Tullman’s continued service with us through each applicable vesting date.

(7) Pursuant to an amendment to the option agreement governing these options, on July 3, 2018, the options were amended to increase the exercise price from $1.88 to $3.62 per share. Based on performance and market conditions, we relied on the Monte Carlo simulation model.

(8) Each of the options held by Dr. Schneider vest in monthly installments over four years with a 12-month vesting cliff, in each case, subject to Dr. Schneider’s continued service with us through each applicable vesting date.

(9) This award vests in monthly installments over four years, provided that a liquidity event such as the expiration of the six month period immediately following the Company’s initial public offering or a change of control of our company must occur for vesting to occur, subject to Dr. Schneider’s continued service with us through each applicable vesting date.

(10) Each of the options held by Mr. Pursley vest in monthly installments over four years with a 12-month vesting cliff, in each case subject to continued service with us through each applicable vesting date.
In April 2019, our board of directors granted Dr. Schneider an RSU award of 155,000 shares of our common stock. The shares will vest over a period of four years with a 12-month vesting cliff, subject to Dr. Schneider’s continued service with us through each applicable vesting date.

In April 2019, our board of directors granted Mr. Pursley an RSU award of 50,000 shares of our common stock. The shares will vest over a period of 12 months, subject to specified performance-based vesting conditions and Mr. Pursley’s continued service with us through the applicable vesting date.

Employee Benefits and Stock Plans

2019 Equity Incentive Plan

Prior to the effectiveness of this offering, our board of directors intends to adopt, and we expect our stockholders will approve, our 2019 Plan. We expect that our 2019 Plan will be effective on the business day immediately prior to the effective date of our registration statement related to this offering. Our 2019 Plan will provide for the grant of incentive stock options, within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended, or Code, to our employees and any parent and subsidiary corporations’ employees, and for the grant of nonstatutory stock options, restricted stock, restricted stock units, stock appreciation rights, performance units, and performance shares to our employees, directors, and consultants and our parent and subsidiary corporations’ employees and consultants.

Authorized shares. A total of [insert number] shares of our common stock will be reserved for issuance pursuant to our 2019 Plan. In addition, the shares reserved for issuance under our 2019 Plan will include (i) shares that were reserved but unissued under our 2014 Stock Incentive Plan, or our 2014 Plan, as of immediately prior to its termination, plus (ii) shares subject to awards under our 2014 Plan, and our 2008 Stock Incentive Plan, or 2008 Plan, that, on or after the termination of the 2014 Plan, expire or terminate and shares previously issued pursuant to our 2014 Plan or 2008 Plan, as applicable, that, on or after the termination of the 2014 Plan, are forfeited or repurchased by us (provided that the maximum number of shares that may be added to our 2019 Plan from the 2014 Plan and 2008 Plan is [insert number] shares). The number of shares of our common stock available for issuance under our 2019 Plan will also include an annual increase on the first day of each fiscal year beginning on January 1, 2020, equal to the least of:

- [insert number] shares;
- % of the outstanding shares of our capital stock as of the last day of our immediately preceding fiscal year; or
- such other amount as our board of directors may determine as of no later than the last day of our immediately preceding fiscal year.

If an award expires or becomes unexercisable without having been exercised in full, is surrendered pursuant to an exchange program, or, with respect to restricted stock, restricted stock units, performance units, or performance shares, is forfeited to or repurchased due to failure to vest, the unpurchased shares (or for awards other than stock options or stock appreciation rights, the forfeited or repurchased shares) will become available for future grant or sale under the 2019 Plan and all remaining shares subject to stock appreciation rights will remain available for future grant or sale under the 2019 Plan. Shares that have actually been issued under the 2019 Plan under any award will not be returned to the 2019 Plan; provided, however, that if shares issued pursuant to awards of restricted stock, restricted stock units, performance shares, or performance units are repurchased or forfeited, such shares will become available for future grant under the 2019 Plan. Shares used to pay the exercise price of an award or satisfy the tax withholding obligations related to an award (which withholding may be in amounts greater than the minimum statutory amount required to be withheld as determined by the administrator of our 2019 Plan) will become available for future grant or sale under the 2019 Plan. To the extent an award is paid out in cash rather than shares, such cash payment will not result in a
reduction in the number of shares available for issuance under the 2019 Plan. Shares issuable under the 2019 Plan are authorized, but unissued, or reacquired shares of our common stock.

**Plan administration.** Our board of directors or one or more committees appointed by our board of directors will administer our 2019 Plan. Our compensation committee is expected to administer our 2019 Plan. In addition, if we determine it is desirable to qualify transactions under our 2019 Plan as exempt under Rule 16b-3, such transactions will be structured to satisfy the requirements for exemption under Rule 16b-3. Subject to the provisions of our 2019 Plan, the administrator has the power to administer our 2019 Plan and make all determinations deemed necessary or advisable for administering the 2019 Plan, including but not limited to, the power to determine the fair market value of our common stock, select the service providers to whom awards may be granted, determine the number of shares covered by each award, approve forms of award agreements for use under the 2019 Plan, determine the terms and conditions of awards (including, but not limited to, the exercise price, the times or times at which the awards may be exercised, any vesting acceleration or waiver or forfeiture restrictions, and any restriction or limitation regarding any award or the shares relating thereto), construe and interpret the terms of our 2019 Plan and awards granted under it, to prescribe, amend, and rescind rules relating to our 2019 Plan, including creating sub-plans, and to modify or amend each award, including but not limited to the discretionary authority to extend the post-termination exercisability period of awards (provided that no option or stock appreciation right will be extended past its original maximum term), and to allow a participant to defer the receipt of payment of cash or the delivery of shares that would otherwise be due to such participant under an award. The administrator also has the authority to amend existing awards to reduce or increase their exercise prices, to allow participants the opportunity to transfer outstanding awards to a financial institution or other person or entity selected by the administrator and to institute an exchange program by which outstanding awards may be surrendered or cancelled in exchange for awards of the same type which may have a higher or lower exercise price or different terms, awards of a different type and/or cash. The administrator's decisions, interpretations, and other actions are final and binding on all participants to the full extent permitted by law.

**Stock options.** Stock options may be granted under our 2019 Plan. The exercise price of options granted under our 2019 Plan must at least be equal to the fair market value of our common stock on the date of grant. The term of an option may not exceed ten years. With respect to any participant who owns more than 10% of the voting power of all classes of our outstanding stock, the term of an incentive stock option granted to such participant must not exceed five years and the exercise price must equal at least 110% of the fair market value on the grant date. The administrator will determine the methods of payment of the exercise price of an option, which may include cash, shares or other property acceptable to the administrator, as well as other types of consideration permitted by applicable law. After the termination of service of an employee, director or consultant, he or she may exercise his or her option for the period of time stated in his or her option agreement. In the absence of a specified time in an award agreement, if termination is due to death or disability, the option will remain exercisable for 12 months. In all other cases, in the absence of a specified time in an award agreement, the option will remain exercisable for three months following the termination of service. However, an option may not be exercised later than the expiration of its term. Subject to the provisions of our 2019 Plan, the administrator determines the other terms of options.

**Stock appreciation rights.** Stock appreciation rights may be granted under our 2019 Plan. Stock appreciation rights allow the recipient to receive the appreciation in the fair market value of our common stock between the exercise date and the date of grant. Stock appreciation rights may not have a term exceeding ten years. After the termination of service of an employee, director, or consultant, he or she may exercise his or her stock appreciation right for the period of time stated in his or her stock appreciation rights agreement. In the absence of a specified time in an award agreement, if termination is due to death or disability, the stock appreciation rights will remain exercisable for 12 months. In all other cases, in the absence of a specified time in an award agreement, the stock appreciation rights will remain exercisable for three months following the termination of service. However, in no event may a stock appreciation right be exercised later than the expiration of its term. Subject to the provisions of our 2019 Plan, the administrator determines the other terms of stock appreciation rights, including when such rights become exercisable and whether to pay any increased appreciation in cash or
with shares of our common stock, or a combination thereof, except that the per share exercise price for the shares to be issued pursuant to the exercise of a stock appreciation right will be no less than 100% of the fair market value per share on the date of grant.

Restricted stock. Restricted stock may be granted under our 2019 Plan. Restricted stock awards are grants of shares of our common stock that vest in accordance with terms and conditions established by the administrator. The administrator will determine the number of shares of restricted stock granted to any employee, director or consultant and, subject to the provisions of our 2019 Plan, will determine the terms and conditions of such awards. The administrator may impose whatever conditions to vesting it determines to be appropriate (for example, the administrator may set restrictions based on the achievement of specific performance goals or continued service to us); provided, however, that the administrator, in its sole discretion, may accelerate the time at which any restrictions will lapse or be removed. Recipients of restricted stock awards generally will have voting and dividend rights with respect to such shares upon grant without regard to vesting, unless the administrator provides otherwise. Shares of restricted stock that do not vest are subject to our right of repurchase or forfeiture.

Restricted stock units. RSUs may be granted under our 2019 Plan. RSUs are bookkeeping entries representing an amount equal to the fair market value of one share of our common stock. Subject to the provisions of our 2019 Plan, the administrator determines the terms and conditions of RSUs, including the vesting criteria and the form and timing of payment. The administrator may set vesting criteria based upon the achievement of company-wide, divisional, business unit, or individual goals (including, but not limited to, continued employment or service), applicable federal or state securities laws, or any other basis determined by the administrator in its discretion. The administrator, in its sole discretion, may pay earned restricted stock units in the form of cash, in shares, or in some combination of both. Notwithstanding the foregoing, the administrator, in its sole discretion, may accelerate the time at which any restrictions will lapse or be removed.

Performance units and performance shares. Performance units and performance shares may be granted under our 2019 Plan. Performance units and performance shares are awards that will result in a payment to a participant only if performance goals established by the administrator are achieved or the awards otherwise vest. The administrator will establish performance goals or other vesting criteria in its discretion, which, depending on the extent to which they are met, will determine the number and/or the value of performance units and performance shares to be paid out to participants. The administrator may set performance objectives based on the achievement of company-wide, divisional, business unit, or individual goals (including, but not limited to, continued employment or service), applicable federal or state securities laws, or any other basis determined by the administrator in its discretion. After the grant of a performance unit or performance share, the administrator, in its sole discretion, may reduce or waive any performance criteria or other vesting provisions for such performance units or performance shares. Performance units shall have an initial dollar value established by the administrator on or prior to the grant date. Performance shares shall have an initial value equal to the fair market value of our common stock on the grant date. The administrator, in its sole discretion, may pay earned performance units or performance shares in the form of cash, in shares or in some combination thereof.

Outside directors. Our 2019 Plan provides that all outside (non-employee) directors will be eligible to receive all types of awards (except for incentive stock options) available for issuance under our 2019 Plan. Prior to the completion of this offering, we intend to implement a formal policy pursuant to which our outside directors will be eligible to receive equity awards under our 2019 Plan. In order to provide a maximum limit on the awards that can be made to our outside directors, our 2019 Plan provides that in any given fiscal year, an outside director (i) will not be granted cash-settled awards having a grant-date fair value greater than $ , but that in the fiscal year that an outside director first joins our board of directors, he or she may be granted a cash-settled award with a grant-date fair value of up to $ ; and (ii) will not be granted stock-settled awards having a grant-date fair value greater than $ , but that in the fiscal year that an outside director first joins our board of directors, he or she may be granted stock-settled awards having a grant-date fair value of up to $ , in each case, excluding any awards granted to him or her as a consultant (other than a director) or employee. The grant-
Non-transferability of awards. Unless the administrator provides otherwise, our 2019 Plan generally does not allow for the transfer of awards and only the recipient of an award may exercise an award during his or her lifetime. If the administrator makes an award transferrable, such award will contain such additional terms and conditions as the administrator deems appropriate.

Certain adjustments. In the event of certain changes in our capitalization, such as an extraordinary dividend or distribution, recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, exchange of our shares or other securities, issuance of warrants, or any similar equity restructuring transaction, to prevent diminution or enlargement of the benefits or potential benefits available under our 2019 Plan, the administrator will adjust the number and class of shares that may be delivered under the Plan and/or the number, class, and price of shares covered by each outstanding award, and the numerical share limits set forth in our 2019 Plan.

Dissolution or liquidation. In the event of our proposed liquidation or dissolution, the administrator will notify participants as soon as practicable and all awards will terminate immediately prior to the consummation of such proposed transaction.

Merger or change in control. Our 2019 Plan provides that in the event of a merger or change in control, as defined under our 2019 Plan, each outstanding award will be treated as the administrator determines, without a requirement to obtain a participant's consent, including, without limitation, that such award will be continued by the successor corporation or a parent or subsidiary of the successor corporation. An award will be considered continued if following the transaction, (i) the award gives the right to purchase or receive the consideration received in the transaction by holders of our shares or (ii) the award is terminated in exchange for an amount of cash and/or property, if any, equal to the amount that would have been received upon the exercise or realization of the award, which payment may be subject to any escrow applicable to holders of our common stock in connection with the transaction or subjected to the award’s original vesting schedule. The administrator is not required to treat all awards, all awards held by a participant, or all awards of the same type, similarly.

In the event that a successor corporation or its parent or subsidiary does not continue an outstanding award, then such award will fully vest, all restrictions on such award will lapse, all performance goals or other vesting criteria applicable to such award will be deemed achieved at 100% of target levels and such award will become fully exercisable, if applicable, for a specified period prior to the transaction, unless specifically provided for otherwise under the applicable award agreement or other written agreement with the participant. The award will then terminate upon the expiration of the specified period of time. If an option or stock appreciation right is not assumed or substituted, the administrator will notify the participant in writing or electronically that such option or stock appreciation right will be exercisable for a period of time determined by the administrator in its sole discretion and the option or stock appreciation right will terminate upon the expiration of such period.

If an outside director's awards are assumed or substituted for in a merger or change in control and the service of such outside director is terminated on or following a change in control, other than pursuant to a voluntary resignation, his or her options and stock appreciation rights, if any, will vest fully and become immediately exercisable, all restrictions on his or her restricted stock and restricted stock units will lapse and all performance goals or other vesting requirements for his or her performance shares and units will be deemed achieved at 100% of target levels, and all other terms and conditions met.

Clawback. Awards will be subject to any clawback policy of ours, and the administrator also may specify in an award agreement that the participant’s rights, payments, and/or benefits with respect to an award will be subject to reduction, cancellation, forfeiture, and/or recoupment upon the occurrence of certain specified events. Our board of directors may require a participant to forfeit, return, or reimburse us all or a portion of the award.
and/or shares issued under the award, any amounts paid under the award, and any payments or proceeds paid or provided upon disposition of the shares issued under the award in order to comply with such clawback policy or applicable laws.

Amendment; termination. The administrator has the authority to amend, suspend or terminate our 2019 Plan provided such action does not impair the existing rights of any participant. Our 2019 Plan automatically will terminate in 2029, unless we terminate it sooner.

2019 Employee Stock Purchase Plan

Prior to the effectiveness of this offering, our board of directors intends to adopt, and we expect our stockholders will approve, our ESPP. Our ESPP will be effective on the business day immediately prior to the effective date of the registration statement of which this prospectus forms a part. However, no offering period or purchase period under the ESPP will begin unless and until determined by our board of directors.

Authorized shares. A total of shares of our common stock will be available for sale under our ESPP. In addition, our ESPP will provide for annual increases in the number of shares available for sale under our ESPP also includes an annual increase on the first day of each fiscal year beginning on January 1, 2020, equal to the least of:

• shares;
• % of the outstanding shares of our capital stock as of the last day of the immediately preceding fiscal year; or
• such other amount as our board of directors may determine as of no later than the last day of our immediately preceding fiscal year.

Shares issuable under the ESPP are authorized, but unissued, or reacquired shares of our common stock.

Plan administration. Our board of directors or a committee appointed by our board of directors will administer our ESPP. Our compensation committee is expected to administer our ESPP. The administrator will have full and exclusive discretionary authority to construe, interpret, and apply the terms of the ESPP, to delegate ministerial duties to any of our employees, to designate separate offerings under the ESPP, to designate our subsidiaries and affiliates as participating in the ESPP, to determine eligibility, to adjudicate all disputed claims filed under the ESPP and to establish procedures that it deems necessary or advisable for the administration of the ESPP, including, but not limited to, adopting such procedures, sub-plans, and appendices to the enrollment agreement as are necessary or appropriate to permit participation in the ESPP by employees who are foreign nationals or employed outside the United States. The administrator’s findings, decisions, and determinations are final and binding on all participants to the full extent permitted by law.

Eligibility. Generally, all of our employees will be eligible to participate if they are customarily employed by us, or any participating subsidiary, for at least 20 hours per week and more than five months in any calendar year. The administrator, in its discretion, prior to an enrollment date for all options granted on such enrollment date in an offering, may determine that an employee who (i) has not completed at least two years of service (or a lesser period of time determined by the administrator) since his or her last hire date, (ii) customarily works not more than 20 hours per week (or a lesser period of time determined by the administrator), (iii) customarily works not more than five months per calendar year (or a lesser period of time determined by the administrator), (iv) is a highly compensated employee within the meaning of Section 414(q) of the Code, and (v) is a highly compensated employee within the meaning of Section 414(q) of the Code with compensation above a certain level or is an officer or subject to disclosure requirements under Section 16(a) of the Exchange Act, is or is not eligible to participate in such offering period. However, an employee may not be granted rights to purchase stock under our ESPP if such employee:

• immediately after the grant would own capital stock possessing 5% or more of the total combined voting power or value of all classes of our capital stock; or
hold rights to purchase shares of our common stock under all of our employee stock purchase plans that accrue at a rate that exceeds $25,000 worth of shares of our common stock for each calendar year.

Offering periods; purchase periods. Our ESPP includes a component that allows us to make offerings intended to qualify under Section 423 of the Code and a component that allows us to make offerings not intended to qualify under Section 423 of the Code to designated companies, as described in our ESPP. Each offering period will include purchase periods, which will be the approximately six months in duration commencing with one exercise date and ending with the next exercise date. The offering periods are scheduled to start on the first trading day on or after May 15 and November 15 of each year, except that the first offering period will commence on the first trading day on or after completion of this offering and will end on the first trading day on or after May 15, 2020, and the second offering period will commence on May 15, 2020. The administrator is authorized to establish the duration of offering periods and purchase periods, including the starting and ending dates of offering periods and purchase periods, provided that no offering period may have a duration exceeding 27 months. If the fair market value of our common stock on the exercise date is less than the fair market value on the first trading day of the offering period, participants will be withdrawn from the current offering period following their purchase of shares on the purchase date and automatically be enrolled in a new offering period.

Contributions. Our ESPP permits participants to purchase shares of our common stock through payroll deductions of up to 15% of their eligible compensation. A participant may purchase a maximum of shares of our common stock during a purchase period.

Exercise of purchase right. Amounts deducted and accumulated by the participant are used to purchase shares of our common stock at the end of each six-month purchase period. The purchase price of the shares will be 85% of the lower of the fair market value of our common stock on the first trading day of each offering period or on the exercise date. If the fair market value of our common stock on the exercise date is less than the fair market value on the first trading day of the offering period, participants will be withdrawn from the current offering period following their purchase of shares of our common stock on the exercise date and will be automatically re-enrolled in a new offering period. Participants may end their participation at any time during an offering period and will be paid their accrued contributions that have not yet been used to purchase shares of our common stock. Participation ends automatically upon termination of employment with us.

Non-transferability. A participant may not transfer rights granted under our ESPP. If the administrator permits the transfer of rights, it may only be done by will, the laws of descent and distribution, or as otherwise provided under our ESPP.

Merger or change in control. Our ESPP provides that in the event of a merger or change in control, as defined under our ESPP, a successor corporation may assume or substitute each outstanding purchase right. If the successor corporation refuses to assume or substitute for the outstanding purchase right, the offering period then in progress will be shortened, and a new exercise date will be set that will be before the date of the proposed merger or change in control. The administrator will notify each participant that the exercise date has been changed and that the participant’s option will be exercised automatically on the new exercise date unless prior to such date the participant has withdrawn from the offering period.

Amendment; termination. The administrator has the authority to amend, suspend, or terminate our ESPP, except that, subject to certain exceptions described in our ESPP, no such action may adversely affect any outstanding rights to purchase shares of our common stock under our ESPP. Our ESPP automatically will terminate in 2039, unless we terminate it sooner.

2014 Stock Incentive Plan

Our board of directors adopted our 2014 Stock Incentive Plan, or our 2014 Plan, and our stockholders approved the 2014 Plan in April 2014. The 2014 Plan was amended most recently in , 2019 and approved by stockholders most recently in , 2019.
The 2014 Plan provides for the discretionary grant of incentive stock options to our employees and the employees of any subsidiary of ours, and nonstatutory stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance units, performance shares and other incentive awards to our officers, directors, consultants and the officers, directors, consultants and employees of any subsidiary of ours.

Authorized shares. Our 2014 Plan will be terminated in connection with this offering, and no awards will be granted under the 2014 Plan after the 2014 Plan is terminated. Our 2014 Plan will continue to govern outstanding awards granted thereunder. As of March 31, 2019, options to purchase an aggregate of 15,780,536 shares of our common stock and RSUs covering an aggregate of 3,690,243 shares of our common stock remained outstanding under our 2014 Plan. Shares issuable under the 2014 Plan are authorized but unissued shares of our common stock or issued shares of our common stock reacquired by us at any time.

Plan administration. Our board of directors or the compensation committee of our board of directors, or any other committee our board of directors may appoint to administer the Plan, is the administrator of our 2014 Plan and the awards granted under it. While the 2014 Plan remains in effect and subject to the terms of our 2014 Plan, the administrator has the power and authority in its sole discretion to grant awards to eligible individuals pursuant to the terms and provisions of our 2014 Plan. The administrator has the full authority to select participants from among the eligible individuals; to determine whether and to what extent awards are to be granted to eligible individuals; to determine the number of shares to be covered by each such award granted hereunder, subject to the requirements of the 2014 Plan; to determine the terms and conditions of any award granted, to waive compliance by a participant with any obligation to be performed by him or her under any award and to waive any term or condition of any such award, subject to the terms of our 2014 Plan; to determine and interpret the terms and conditions which will govern all written agreements evidencing the awards; and to appoint such agents as it deems necessary or advisable for the proper administration of our 2014 Plan. The administrator has the authority to adopt, alter and repeal such administrative rules, guidelines and practices governing our 2014 Plan as it deems advisable, to interpret the provisions of our 2014 Plan and the terms and conditions of any award issued, expired, terminated, cancelled or surrendered under our 2014 Plan (and any agreements relating thereto), and to otherwise supervise the administration of our 2014 Plan. The administrator also has the authority to amend existing awards to reduce or increase their exercise prices, to allow participants the opportunity to transfer outstanding awards to a financial institution or other person or entity selected by the administrator, and to institute an exchange program by which outstanding awards may be surrendered or cancelled in exchange for awards of the same type that may have a higher or lower exercise price or different terms, awards of a different type, and/or cash. All decisions made by the administrator pursuant to the provisions of our 2014 Plan and as to the terms and conditions of any award (and any agreements relating thereto) will be final and binding on all persons, including us and participants to the fullest extent permitted by law.

Awards. The administrator, in its sole discretion, establishes the terms of all awards granted under the 2014 Plan, consistent with the terms of the 2014 Plan. Each award under the 2014 Plan is evidenced by an award agreement, and contains such terms and conditions as may be authorized or approved by the administrator. Except as restricted in our 2014 Plan with respect to incentive stock options, the administrator may amend or alter the terms and conditions of any award, and of any agreement evidencing such award, prospectively or retroactively, but no such amendment or alteration shall impair the rights of any participant under such award or agreement without the consent of a majority of 2014 Plan participants.

Stock options. Stock options may be granted under our 2014 Plan. Options granted under the 2014 Plan generally must have an exercise price per share at least equal to the fair market value of a share of our common stock as of the date of grant and may have a term up to 10 years, except that with respect to an incentive stock option granted to any participant who owns more than 10% of the combined voting power of all classes of our outstanding stock or any parent or subsidiary, the exercise price per share must equal at least 110% of the fair market value of a share of our common stock on the grant date and the term must not exceed five years. The administrator generally will determine the methods of payment of the exercise price of an option. After termination of service of an employee, director or consultant, he or she may exercise his or her option for the
period of time as specified in the applicable award agreement. Unless otherwise provided in the applicable award agreement, options generally will terminate on the date that the participant’s service terminates. In no event may a stock option be exercised later than its maximum term. Except as may otherwise be provided in the award agreement and the 2014 Plan, the exercise of any stock option after termination of employment will not be permitted if the participant (i) directly or indirectly owns, manages, operates or controls, or participates in the ownership, management, operation or control of, or becomes employed by or connected in any manner with, any entity that is competitive with us or any of our subsidiaries or affiliates, (ii) conducts himself or herself in a manner adversely affecting us or any of our subsidiaries or affiliates, or (iii) violates any covenant with us or any of our subsidiaries or affiliates regarding confidentiality, non-competition and/or non-solicitation.

Restricted stock and restricted stock unit awards. Restricted stock and RSUs may be granted under our 2014 Plan. Restricted stock and RSUs are subject to such restrictions as the administrator determines. After the last day of the period of restriction, (i) shares of restricted stock covered by each restricted stock grant made under our 2014 Plan become transferable by the participant, subject to the award agreement covering such restricted stock, and (ii) the participant will be entitled to receive one share of our stock with respect to each RSU. During any period of restriction, to the extent provided in an applicable award agreement, a participant holding shares of restricted stock or RSUs will be entitled to receive all dividends and other distributions paid with respect to those shares or units while they are so held. If any such dividends or distributions are paid in shares of our stock, the shares shall be subject to the same restrictions on transferability as the shares of restricted stock or RSUs with respect to which they were paid.

Exchange and Substitution. The administrator may, with the participant’s consent, permit the exchange or substitution of one type of award for another type of award in accordance with applicable laws.

Non-transferability of awards. Except as the administrator may permit, no award granted under our 2014 Plan may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, otherwise than by will or by the laws of descent and distribution. Further, except as our 2014 Plan may permit, all awards granted to a participant under our 2014 Plan will be exercisable during his or her lifetime only by such participant.

Certain adjustments. In the event of any merger, reorganization, consolidation, recapitalization, stock dividend, stock split or other similar change in corporate structure or capitalization affecting our common stock, the administrator will make such equitable adjustment in the number and class of shares reserved for issuance under our 2014 Plan, the number and class of shares covered by outstanding awards or the price of shares subject to outstanding awards.

Corporate transactions. Our 2014 Plan provides that, except as determined by our board of directors or as otherwise provided in an award agreement, in the event of a change in control, as defined under our 2014 Plan, there will be no acceleration of the vesting of stock-based awards granted under the Plan, and the administrator is authorized to take any one or more of the following actions whenever the administrator determines that such action is appropriate in order to facilitate a change in control: (i) to provide for either (A) termination of any such award in exchange for an amount of cash, if any, equal to the amount that would have been attained upon the exercise of such award or realization of the participant’s rights or (B) the replacement of such award with other rights or property selected by the administrator in its sole discretion having an aggregate value not exceeding the amount that could have been attained upon the exercise of such award or realization of the participant’s rights had such award been currently exercisable or payable or fully vested; (ii) to provide that such award be assumed or substituted for; or (iii) take any other action that the administrator deems appropriate. A pre-condition to the receipt of such payments with respect to awards in a change in control will be a participants delivery and non-revocation of a commercially reasonable general release for the benefit of us and our affiliates within 30 days of the closing of the change in control or such date as may otherwise be provided in an applicable award agreement.

Amendment; termination. The administrator may terminate our 2014 Plan or any portion thereof at any time and may amend or modify our 2014 Plan from time to time as the administrator may deem advisable so that any
awards thereunder conform to any change in applicable laws or regulations or in any other respect the administrator may deem to be in our best interests. However, no amendment, alteration, or discontinuation of our 2014 Plan will be made (i) which would impair the rights of participants under any award without the consent of a majority of the participants or (ii) as otherwise specified in our 2014 Plan. Upon a change in control and upon the payment of any amounts payable to participants, our board of directors may terminate our 2014 Plan in its entirety. As noted above, no further awards will be granted under the 2014 Plan after it is terminated in connection with this offering. However, all awards outstanding under the 2014 Plan will continue to be governed by their existing terms.

2008 Stock Incentive Plan

Our board of directors adopted our 2008 Stock Incentive Plan, or our 2008 Plan, in November 2008 and our stockholders approved the 2008 Plan in December 2008. The 2008 Plan was amended most recently in , 2019 and approved by stockholders most recently in , 2019.

Our 2008 Plan provided for the discretionary grant of stock options, restricted stock awards, and other stock awards to our or our affiliates’ employees, consultants, and directors, as well as our or our affiliates’ prospective employees, consultants, and directors, provided that incentive stock options were permitted to be granted only to our employees or employees of any of our parent or subsidiaries.

Authorized shares. Following the effective date of our 2014 Plan, no additional stock awards may be granted under our 2008 Plan. However, from and after such date, all outstanding stock awards granted under our 2008 Plan remain subject to the terms of the 2008 Plan. As of March 31, 2019, options to purchase an aggregate of 959,050 shares of our common stock remained outstanding under our 2008 Plan. Shares issuable under the 2008 Plan are authorized but unissued, or reacquired shares of our common stock.

Plan administration. Our board of directors, or, if so appointed by our board of directors, the compensation committee of our board or directors or other committee of the board of directors duly appointed to administer the 2008 Plan, administers our 2008 Plan and the awards granted under it. The administrator has the full and final power and authority, in its discretion, to determine the fair market value of shares of stock or other property; to determine the terms, conditions and restrictions applicable to each award (which need not be identical) and any shares acquired upon the exercise and/or vesting thereof; to amend, modify, extend, cancel, or renew any award or to waive any restrictions or conditions applicable to any award or any shares acquired upon the exercise thereof, provided that no such amendment, modification, extension or cancellation may adversely affect a participant’s award without his or her consent; to accelerate, continue, extend or defer the exercisability and/or vesting of any award, including with respect to the period following a participant’s termination of service with us; to prescribe, amend or rescind rules, guidelines and policies relating to the 2008 Plan, or to adopt supplements to, or alternative versions of, the 2008 Plan; and to correct any defect, supply any omission or reconcile any inconsistency in the 2008 Plan or any award agreement and to make all other determinations and take such other actions with respect to the 2008 Plan or any award as the administrator may deem advisable to the extent not inconsistent with the provisions of the 2008 Plan or applicable law. The administrator also has the authority to amend existing awards to reduce or increase their exercise prices, to allow participants the opportunity to transfer outstanding awards to a financial institution or other person or entity selected by the administrator, and to institute an exchange program by which outstanding awards may be surrendered or cancelled in exchange for awards of the same type that may have a higher or lower exercise price or different terms, awards of a different type, and/or cash. All interpretations and determinations made by the administrator under the 2008 Plan will be final and binding on all persons having an interest in the 2008 Plan or applicable award, to the fullest extent permitted by law.

Our 2008 Plan provides that, at any time that any class of our equity security is registered pursuant to Section 12 of the Securities Exchange Act of 1934, it will be administered in compliance with the requirements, if any, of Rule 16b-3 and all other applicable laws including any required blackout periods. At any time we are
required to comply with Securities Regulation BTR, all transactions under our 2008 Plan respecting our securities will comply with Securities Regulation BTR and our insider trading policies, as revised from time to time, or such other similar policies of ours.

**Awards.** The administrator, in its sole discretion, established the terms of all awards granted under our 2008 Plan, consistent with the terms of the 2008 Plan. Each participant to whom an award was granted was required to enter into an award agreement with us, in a form provided by the administrator. The award agreement contains specific terms as determined by the administrator, in its discretion, with respect to the particular award. Such terms need not be uniform among all participants or any similarly-situated participants.

**Stock options.** Stock options could be granted under our 2008 Plan. Stock options granted under the 2008 Plan generally must have an exercise price per share at least equal to the fair market value of a share of our common stock as of the date of grant and may not have a term exceeding 10 years, except that with respect to an incentive stock option granted to any participant who owns more than 10% of the combined voting power of all classes of our outstanding stock or any parent or subsidiary, the exercise price per share must equal at least 110% of the fair market value of a share of our common stock on the grant date and the term must not exceed five years. Additionally, no stock option granted to a prospective employee, consultant or director could become exercisable prior to such person’s commencement of services with us. The administrator determined the methods of payment of the exercise price of an option. After termination of service of an employee, director or consultant, he or she may exercise the vested portion of his or her option for the period of time as specified in the applicable award agreement. Unless otherwise provided in the applicable award agreement, options generally will: remain exercisable (to the extent vested) for three months following service termination, unless such termination is as a result of death or disability, in which case options will remain exercisable (to the extent vested) for thirty days following service termination; terminate immediately upon termination of service for cause; and upon a change in control, as defined under our 2008 Plan, after an initial public offering of our stock, to the extent vested, unexercised and exercisable on the date on which a participant’s service terminated without cause, be exercisable at any time prior to the expiration of three months after the termination of service. However, in no event may an option be exercised later than its maximum term to expiration.

**Non-transferability of awards.** An award is exercisable only by the participant or the participant’s guardian or legal representative during the lifetime of the participant. An award may be assignable or transferable by a participant only by will or by the laws of descent and distribution or pursuant to a qualified domestic relations order, and only if permitted by the applicable award agreement. At the administrator’s discretion, a nonstatutory stock option may be assignable or transferable subject to applicable limitations.

**Certain adjustments.** In the event of any stock dividend, stock split, reverse stock split, recapitalization, combination, reclassification or similar change in our capital structure, appropriate adjustments will be made in the number and class of shares subject to any outstanding awards and in the exercise price per share of any outstanding awards and with respect to options, if applicable, in accordance with certain applicable tax rules. If a majority of the shares which are of the same class as the shares that are subject to outstanding awards are exchanged for, converted into, or otherwise become (whether or not pursuant to a change in control) shares of another company, the administrator may, in its sole discretion, unilaterally amend the outstanding awards to provide that such awards are exercisable for such new shares, subject to the requirements of the Plan.

**Corporate transactions.** In addition to the adjustment provisions described above, our 2008 Plan provides that, upon a change in control after an initial public offering, the exercisability and vesting of an option and any shares acquired upon the exercise thereof will be accelerated effective as of the date on which a participant’s service terminated to such extent, if any, as determined by the administrator, in its discretion, and set forth in the award agreement evidencing such option.

**Amendment; termination.** The administrator may amend the 2008 Plan at any time. The 2008 Plan was terminated in connection with the adoption of the 2014 Plan. However, no termination or amendment of the 2008
Executive Incentive Compensation Plan

Prior to the completion of this offering, our board of directors intends to adopt our Executive Incentive Compensation Plan, or Bonus Plan. The Bonus Plan will be administered by a committee appointed by our board of directors. Unless and until our board of directors determines otherwise, our compensation committee will be the administrator of the Bonus Plan. The Bonus Plan allows our compensation committee to provide cash incentive awards to selected employees, including our named executive officers, determined by our compensation committee, based upon performance goals established by our compensation committee. Our compensation committee, in its sole discretion, will establish a target award for each participant under the Bonus Plan, which may be expressed as a percentage of the participant’s average annual base salary for the applicable performance period, a fixed dollar amount, or such other amount or based on such other formula as our compensation committee determines to be appropriate.

Under the Bonus Plan, our compensation committee will determine the performance goals applicable to awards, which goals may include, without limitation: attainment of research and development milestones, bookings, business divestitures and acquisitions, cash flow, cash position, contract awards or backlog, customer renewals, customer retention rates from an acquired company, subsidiary, business unit or division, earnings (which may include earnings before interest and taxes, earnings before taxes, and net taxes), earnings per share, expenses, gross margin, growth in stockholder value relative to the moving average of the S&P 500 Index or another index, internal rate of return, market share, net income, net profit, net sales, new product development, new product invention or innovation, number of customers, operating cash flow, operating expenses, operating income, operating margin, overhead or other expense reduction, product defect measures, product release timelines, productivity, profit, retained earnings, return on assets, return on capital, return on equity, return on investment, return on sales, revenue, revenue growth, sales results, sales growth, stock price, time to market, total stockholder return, working capital, and individual objectives such as peer reviews or other subjective or objective criteria. As determined by our compensation committee, the performance goals may be based on GAAP or non-GAAP results and any actual results may be adjusted by our compensation committee for one-time items or unbudgeted or unexpected items and/or payments of actual awards under the Bonus Plan when determining whether the performance goals have been met. The goals may be on the basis of any factors our compensation committee determines relevant, and may be on an individual, divisional, business unit, segment or company-wide basis. Any criteria used may be measured on such basis as our compensation committee determines. The performance goals may differ from participant to participant and from award to award. Our compensation committee also may determine that a target award or a portion thereof will not have a performance goal associated with it but instead will be granted (if at all) in the compensation committee’s sole discretion.

Our compensation committee may, in its sole discretion and at any time, increase, reduce or eliminate a participant’s actual award, or increase, reduce or eliminate the amount allocated to the bonus pool. The actual award may be below, at or above a participant’s target award, in our compensation committee’s discretion. Our compensation committee may determine the amount of any increase, reduction or elimination on the basis of such factors as it deems relevant, and it will not be required to establish any allocation or weighting with respect to the factors it considers.

Actual awards generally will be paid in cash (or its equivalent) in a single lump sum only after they are earned and approved by our compensation committee. Our compensation committee has the right, in its sole discretion, to settle an actual award with a grant of an equity award under our then-current equity compensation plan, which equity award may have such terms and conditions, including vesting, as our compensation committee
determines in its sole discretion. Unless otherwise determined by our compensation committee, to earn an actual award, a participant must be employed by us (or an affiliate of us, as applicable) through the date the bonus is paid. Payment of bonuses occurs as soon as administratively practicable after the end of the applicable performance period, but no later than the dates set forth in the Bonus Plan.

Our board of directors will have the authority to amend or terminate the Bonus Plan provided such action does not alter or impair the existing rights of any participant with respect to any earned bonus without the participant’s consent. The Bonus Plan will remain in effect until terminated in accordance with the terms of the Bonus Plan.

401(k) Plan

We maintain a tax-qualified retirement savings plan, or the 401(k) plan, for the benefit of our employees, including our named executive officers, who satisfy certain eligibility requirements. Our 401(k) plan provides eligible employees with an opportunity to save for retirement on a tax-advantaged basis. Under our 401(k) plan, eligible employees may elect to defer a portion of their compensation, within the limits prescribed by the Code, on a pre-tax or after-tax (Roth) basis through contributions to the 401(k) plan. Participants in our 401(k) plan are able to defer up to 95% of their eligible compensation subject to applicable annual Code limits. All participants’ interests in their deferrals are 100% vested when contributed. The 401(k) plan permits us to make matching contributions and profit sharing contributions to eligible participants, although we have not made any such contributions to date. The 401(k) plan is intended to qualify under Sections 401(a) and 501(a) of the Code. As a tax-qualified retirement plan, pre-tax contributions to the 401(k) plan and earnings on those pre-tax contributions are not taxable to the employees until distributed from the 401(k) plan, and earnings on Roth contributions are not taxable when distributed from the 401(k) plan.
CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

In addition to the compensation arrangements, including employment, termination of employment and change in control arrangements discussed in the sections titled “Management” and “Executive Compensation” and the registration rights described in the section titled “Description of Capital Stock—Registration Rights,” the following is a description of each transaction since January 1, 2016 and each currently proposed transaction in which:

- we have been or are to be a participant;
- the amount involved exceeded or exceeds $120,000; and
- any of our directors, executive officers, or holders of more than 5% of our outstanding capital stock, or any immediate family member of, or person sharing the household with, any of these individuals or entities, had or will have a direct or indirect material interest.

Redeemable Convertible Preferred Stock Financings

**Series E Redeemable Convertible Preferred Stock Financing**

In April 2018, we sold an aggregate of 12,655,477 shares of our Series E redeemable convertible preferred stock at a purchase price of $8.2968 for an aggregate purchase price of $105.0 million, pursuant to our Series E redeemable convertible preferred stock financing. Each share of our Series E redeemable convertible preferred stock will convert automatically into one share of our common stock immediately prior to the closing of this offering. The following table summarizes purchases of our Series E redeemable convertible preferred stock by related persons:

<table>
<thead>
<tr>
<th>Stockholder</th>
<th>Shares of Series E Redeemable Convertible Preferred Stock</th>
<th>Total Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kinnevik Online AB(1)</td>
<td>4,984,100</td>
<td>$41,352,085</td>
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<tr>
<td>Entities Affiliated with General Catalyst(2)</td>
<td>3,856,908</td>
<td>$31,999,998</td>
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<tr>
<td>Entities Affiliated with 7WireVentures(3)</td>
<td>949,211</td>
<td>$7,875,418</td>
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<tr>
<td>Merck Global Health Innovation Fund, LLC(4)</td>
<td>808,910</td>
<td>$6,711,369</td>
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<tr>
<td>KPCB Holdings, Inc., as nominee(5)</td>
<td>12,053</td>
<td>$100,001</td>
</tr>
</tbody>
</table>

(1) Christopher Bischoff, a member of our board of directors, is a Senior Investment Director at Kinnevik Online AB.
(2) Affiliates of General Catalyst holding our securities whose shares are aggregated for purposes of reporting share ownership information are General Catalyst Group VIII, L.P. and General Catalyst Group VIII, Supplemental, L.P. Hemant Taneja, a member of our board of directors, is a Managing Director at General Catalyst. Affiliates of General Catalyst hold more than 5% of our outstanding capital stock.
(3) Affiliates of 7WireVentures holding our securities whose shares are aggregated for purposes of reporting share ownership information are 7WireVentures Fund, L.P., 7WireVentures LLC—Series Livongo E and 7WireVentures Wanxiang Strategic Fund I, LLC. Glen Tullman, a member of our board of directors and our Executive Chairman, and Lee Shapiro, our Chief Financial Officer, are managing partners at 7WireVentures.
(4) Merck Global Health Innovation Fund, LLC holds more than 5% of our outstanding capital stock.
(5) KPCB Holdings, Inc., as nominee, holds more than 5% of our outstanding capital stock.

**Series D Redeemable Convertible Preferred Stock Financing**

In March 2017, we sold an aggregate of 11,773,932 shares of our Series D redeemable convertible preferred stock at a purchase price of $4.4590 for an aggregate purchase price of $52.5 million, pursuant to our Series D redeemable convertible preferred stock financing. Each share of our Series D redeemable convertible preferred stock will convert automatically into one share of our common stock immediately prior to the closing of this
offering. The following table summarizes purchases of our Series D redeemable convertible preferred stock by related persons:

<table>
<thead>
<tr>
<th>Stockholder</th>
<th>Shares of Series D Redeemable Convertible Preferred Stock</th>
<th>Total Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kinnevik Online AB(1)</td>
<td>2,803,319</td>
<td>$12,499,999</td>
</tr>
<tr>
<td>General Catalyst Group VI, L.P.(2)</td>
<td>2,242,655</td>
<td>$ 9,999,999</td>
</tr>
<tr>
<td>Merck Global Health Innovation Fund, LLC(3)</td>
<td>716,528</td>
<td>$ 3,194,998</td>
</tr>
<tr>
<td>KPCB Holdings, Inc., as nominee(4)</td>
<td>22,426</td>
<td>$ 100,000</td>
</tr>
</tbody>
</table>

(1) Christopher Bischoff, a member of our board of directors, is a Senior Investment Director at Kinnevik Online AB.
(2) Hemant Taneja, a member of our board of directors, is a Managing Director at General Catalyst. General Catalyst Group VI, L.P. and its affiliates hold more than 5% of our outstanding capital stock.
(3) Merck Global Health Innovation Fund, LLC holds more than 5% of our outstanding capital stock.
(4) KPCB Holdings, Inc., as nominee, holds more than 5% of our outstanding capital stock.

Series C Redeemable Convertible Preferred Stock Financing

In April 2016, we sold an aggregate of 14,856,929 shares of our Series C redeemable convertible preferred stock at a purchase price of $3.3318 for an aggregate purchase price of $49.5 million, pursuant to our Series C redeemable convertible preferred stock financing. Each share of our Series C redeemable convertible preferred stock will convert automatically into one share of our common stock immediately prior to the closing of this offering. The following table summarizes purchases of our Series C redeemable convertible preferred stock by related persons:

<table>
<thead>
<tr>
<th>Stockholder</th>
<th>Shares of Series C Redeemable Convertible Preferred Stock</th>
<th>Total Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Merck Global Health Innovation Fund, LLC(1)</td>
<td>4,502,070</td>
<td>$14,999,998</td>
</tr>
<tr>
<td>General Catalyst Group VI, L.P.(2)</td>
<td>1,125,517</td>
<td>$ 3,749,999</td>
</tr>
<tr>
<td>KPCB Holdings, Inc., as nominee(3)</td>
<td>300,138</td>
<td>$ 1,000,000</td>
</tr>
</tbody>
</table>

(1) Merck Global Health Innovation Fund, LLC holds more than 5% of our outstanding capital stock.
(2) Hemant Taneja, a member of our board of directors, is a Managing Director at General Catalyst. General Catalyst Group VI, L.P. and its affiliates hold more than 5% of our outstanding capital stock.
(3) KPCB Holdings, Inc., as nominee holds more than 5% of our outstanding capital stock.

Secondary Transactions

In December 2016 and December 2017, certain of our stockholders sold 118,750 shares and 605,345 shares of our common stock, respectively, for aggregate proceeds of $1.3 million. The purchasers included certain of our stockholders, including an aggregate of $0.9 million in shares purchased by an entity affiliated with General Catalyst, an entity affiliated with 7WireVentures, and Kinnevik Online AB, who each hold more than 5% of our outstanding capital stock. Hemant Taneja, a member of our board of directors, is affiliated with General Catalyst. Glen Tullman, a member of our board of directors and our Executive Chairman, and Lee Shapiro, our Chief Financial Officer, are managing partners at 7WireVentures. Christopher Bischoff, a member of our board of directors, is a Senior Investment Director at Kinnevik Online AB. We waived our transfer restrictions in our bylaws in connection with these sales, and we waived our right of first refusal in connection with certain of these sales.

In December 2018, an aggregate of 2,196,247 shares of our common stock, Series A redeemable convertible preferred stock, Series C redeemable convertible preferred stock and Series D redeemable convertible preferred stock were purchased pursuant to a third-party tender offer for aggregate proceeds of $16.4 million from certain
entities associated with our employees and directors, including sales by Jennifer Schneider, our President, for aggregate proceeds of $0.2 million, by James Pursley, our Chief Commercial Officer, for aggregate proceeds of $0.3 million, and by individuals and entities that invested in 7WireVentures, which holds more than 5% of our outstanding capital stock, through a Livongo-specific fund for aggregate proceeds of $5.2 million. The purchasers included certain of our stockholders, including an aggregate of $14.6 million in shares purchased by Kinnevik Online AB and an entity affiliated with 7WireVentures, who each hold more than 5% of our outstanding capital stock. Mr. Tullman, our Executive Chairman and a member of our board of directors, and Mr. Shapiro, our Chief Financial Officer, are managing partners at 7WireVentures. We waived our transfer restrictions in our bylaws and our right of first refusal in connection with this third-party tender offer.

See the section titled “Principal Stockholders” for additional information regarding beneficial ownership of our capital stock.

Leased Property

In March 2017, 7Wire Ventures, LLC, an entity affiliated with 7WireVentures, assigned its commercial lease for an office facility in Chicago, Illinois to us. 7WireVentures is a holder of more than 5% of our outstanding capital stock, and Mr. Tullman, our Executive Chairman and a member of our board of directors, and Mr. Shapiro, our Chief Financial Officer, are managing partners at 7WireVentures. In connection with this lease assignment, we assumed all rights and obligations under the original lease agreement. In addition, we entered into a sublease, which commenced in September 2017, with 7wire Management, LLC, another entity affiliated with 7WireVentures, pursuant to which 7wire Management, LLC will sublease a portion of such office facility. Pursuant to the terms of our sublease agreement with 7wire Management, LLC for this property, the average total monthly payment by 7wire Management, LLC for the first year of the sublease term was approximately $3,608. The total monthly payment payable by 7wire Management, LLC is calculated based on its pro rata usage of the facilities, multiplied by the market price of the lease. The total monthly payment by 7wire Management, LLC is adjusted annually pursuant to the terms of the sublease agreement. The term of the sublease expires on December 28, 2024.

In January 2019, 7wire Management, LLC assigned its commercial lease for an office facility in Chicago, Illinois to us. In connection with this lease assignment, we assumed all rights and obligations under the original lease agreement. In addition, we entered into a sublease, which commenced in February 2019, with 7wire Management, LLC, pursuant to which 7wire Management, LLC will sublease a portion of such office facility. Pursuant to the terms of our sublease agreement with 7wire Management, LLC for this property, the aggregate total monthly payment by 7wire Management, LLC for the first year of the sublease term will be approximately $5,532. The total monthly payment payable by 7wire Management, LLC is calculated based on its pro rata usage of the facilities, multiplied by the market price of the lease. The aggregate monthly payment by 7wire Management, LLC will be adjusted annually pursuant to the terms of the sublease agreement. The term of the sublease expires on December 31, 2024.

Commercial Arrangements

During 2017, the Company had a shared services arrangement with 7WireVentures pursuant to which it received financial, legal and administrative services, for which it paid $0.3 million. 7WireVentures is a holder of more than 5% of our outstanding capital stock, and Mr. Tullman, our Executive Chairman and a member of our board of directors, and Mr. Shapiro, our Chief Financial Officer, are managing partners at 7WireVentures. We ceased this arrangement in the first half of 2018.

From time to time, we do business with other companies affiliated with our securityholders. We believe that all such arrangements have been entered into in the ordinary course of business and have been conducted on an arm’s-length basis. An affiliate of Merck Global Innovation Fund, LLC, who holds more than 5% of our outstanding capital stock, is a client of ours through one of our channel partners. During 2017 and 2018, we recorded revenue of $0.2 million and $0.4 million, respectively, from this affiliate.
Fourth Amended and Restated Investors’ Rights Agreement

We are party to our Fourth Amended and Investors’ Rights Agreement, or IRA, dated as of April 10, 2018, which provides, among other things, that certain holders of our capital stock, including entities affiliated with each of 7WireVentures and General Catalyst, as well as Kinnevik Online AB, KPCB Holdings, Inc., as nominee, and Merck Global Health Innovation Fund, LLC, be covered by a registration statement that we are otherwise filing. Mr. Tullman, our Executive Chairman and a member of our board of directors, and Mr. Shapiro, our Chief Financial Officer, are managing partners at 7WireVentures. Mr. Taneja, a member of our board of directors, is affiliated with General Catalyst. Mr. Taranto, a former member of our board of directors, is affiliated with Merck Global Health Innovation Fund, LLC. Mr. Bischoff, a member of our board of directors, is affiliated with Kinnevik Online AB. See the section titled “Description of Capital Stock—Registration Rights” for additional information regarding these registration rights.

Fourth Amended Right of First Refusal and Co-Sale Agreement

We are party to our Fourth Amended and Restated Right of First Refusal and Co-Sale Agreement, dated April 10, 2018, which provides, among other things, that certain holders of our capital stock, including Kinnevik Online AB, KPCB Holdings, Inc., as nominee, Merck Global Health Innovation Fund, LLC, and entities affiliated with each of General Catalyst and 7WireVentures, who each hold more than 5% of our outstanding capital stock, have rights of first refusal and co-sale with respect to certain sales of securities by our certain holders of our capital stock. Mr. Tullman, our Executive Chairman and a member of our board of directors, and Mr. Shapiro, our Chief Financial Officer, are managing partners at 7WireVentures. Mr. Taneja, a member of our board of directors, is affiliated with General Catalyst. Mr. Taranto, a former member of our board of directors, is affiliated with Merck Global Health Innovation Fund, LLC. Mr. Bischoff, a member of our board of directors, is a Senior Investment Director at Kinnevik Online AB. These rights will terminate immediately prior to the completion of this offering.

Fourth Amended and Restated Voting Agreement

We are party to our Fourth Amended and Restated Voting Agreement, or the Voting Agreement, dated as of April 10, 2018, under which certain holders of our capital stock, including Kinnevik Online AB, KPCB Holdings, Inc., as nominee, Merck Global Health Innovation Fund, LLC, and entities affiliated with each of General Catalyst and 7WireVentures, who each hold more than 5% of our outstanding capital stock, have agreed to vote their shares of our capital stock on certain stock on certain matters, including with respect to the election of directors. Mr. Tullman, our Executive Chairman and a member of our board of directors, and Mr. Shapiro, our Chief Financial Officer, are managing partners at 7WireVentures. Mr. Taneja, a member of our board of directors, is affiliated with General Catalyst. Mr. Taranto, a former member of our board of directors, is affiliated with Merck Global Health Innovation Fund, LLC. Mr. Bischoff, a member of our board of directors, is a Senior Investment Director at Kinnevik Online AB. Immediately prior to the completion of this offering, the Voting Agreement will terminate and none of our stockholders will have any special rights regarding the election or designation of members of our board of directors.

Other Transactions

We have granted stock options and RSUs to our executive officers and certain of our directors. See the sections titled “Executive Compensation—Outstanding Equity Awards at 2018 Year-End” and “Management—Non-Employee Director Compensation” for a description of these options and RSUs.

We have entered into offer letters, employment agreements, and change in control arrangements with certain of our executive officers that, among other things, provide for certain compensation, termination, severance, and change in control benefits. See the section titled “Executive Compensation—Named Executive Officer Offer Letters” for more information regarding these agreements.
Other than as described above under this section, since January 1, 2016, we have not entered into any transactions, nor are there any currently proposed transactions, between us and a related party where the amount involved exceeds, or would exceed, $120,000, and in which any related person had or will have a direct or indirect material interest. We believe the terms of the transactions described above were comparable to terms we could have obtained in arm’s-length dealings with unrelated third parties.

Limitation of Liability and Indemnification of Officers and Directors

We expect to adopt an amended and restated certificate of incorporation that will become effective immediately prior to the completion of this offering, and which will contain provisions that limit the liability of our directors for monetary damages to the fullest extent permitted by Delaware law. Consequently, our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for the following:

- any breach of their duty of loyalty to our company or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law;
- any transaction from which they derived an improper personal benefit.

Any amendment to, or repeal of, these provisions will not eliminate or reduce the effect of these provisions in respect of any act, omission or claim that occurred or arose prior to that amendment or repeal. If the Delaware General Corporation Law is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of our directors will be further limited to the greatest extent permitted by the Delaware General Corporation Law.

In addition, we expect to adopt amended and restated bylaws, which will become effective immediately prior to the completion of this offering, and which will provide that we will indemnify, to the fullest extent permitted by law, any person who is or was a party or is threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was one of our directors or officers or is or was serving at our request as a director or officer of another corporation, partnership, joint venture, trust, or other enterprise. Our amended and restated bylaws are expected to provide that we may indemnify to the fullest extent permitted by law any person who is or was a party or is threatened to be made a party to any action, suit, or proceeding by reason of the fact that he or she is or was one of our employees or agents or is or was serving at our request as an employee or agent of another corporation, partnership, joint venture, trust, or other enterprise. Our amended and restated bylaws will also provide that we must advance expenses incurred by or on behalf of a director or officer in advance of the final disposition of any action or proceeding, subject to limited exceptions.

Further, we have entered into or will enter into indemnification agreements with each of our directors and executive officers that may be broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements require us, among other things, to indemnify our directors and executive officers against liabilities that may arise by reason of their status or service. These indemnification agreements also require us to advance all expenses incurred by the directors and executive officers in investigating or defending any such action, suit, or proceeding. Some of our directors who are affiliated with venture capital firms also have certain rights of indemnification provided by their venture capital funds and the affiliates of those funds, or the Fund Indemnitors. We have agreed to indemnify the Fund Indemnitors to the extent of any claims asserted against the Fund Indemnitors that arise solely from the status or conduct of these directors in their capacity as directors of us. We believe that these agreements are necessary to attract and retain qualified individuals to serve as directors and executive officers.
The limitation of liability and indemnification provisions that are expected to be included in our amended and restated certificate of incorporation, amended and restated bylaws, and in indemnification agreements that we have entered into or will enter into with our directors and executive officers may discourage stockholders from bringing a lawsuit against our directors and executive officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against our directors and executive officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and executive officers as required by these indemnification provisions. At present, we are not aware of any pending litigation or proceeding involving any person who is or was one of our directors, officers, employees or other agents or is or was serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, for which indemnification is sought, and we are not aware of any threatened litigation that may result in claims for indemnification.

We have obtained insurance policies under which, subject to the limitations of the policies, coverage is provided to our directors and executive officers against loss arising from claims made by reason of breach of fiduciary duty or other wrongful acts as a director or executive officer, including claims relating to public securities matters, and to us with respect to payments that may be made by us to these directors and executive officers pursuant to our indemnification obligations or otherwise as a matter of law.

Certain of our non-employee directors may, through their relationships with their employers, be insured and/or indemnified against certain liabilities incurred in their capacity as members of our board of directors.

The underwriting agreement will provide for indemnification by the underwriters of us and our officers and directors for certain liabilities arising under the Securities Act, or otherwise.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling our company pursuant to the foregoing provisions, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

**Policies and Procedures for Related Party Transactions**

Following the completion of this offering, our audit committee will have the primary responsibility for reviewing and approving or disapproving "related party transactions," which are transactions between us and related persons in which the aggregate amount involved exceeds or may be expected to exceed $120,000 and in which a related person has or will have a direct or indirect material interest. Upon completion of this offering, our policy regarding transactions between us and related persons will provide that a related person is defined as a director, executive officer, nominee for director or greater than 5% beneficial owner of our common stock, in each case since the beginning of the most recently completed year and any of their immediate family members. Our audit committee charter that will be in effect upon completion of this offering will provide that our audit committee shall review and approve or disapprove any related party transactions.
The following table sets forth certain information with respect to the beneficial ownership of our capital stock as of June 17, 2019, and as adjusted to reflect the sale of our common stock offered by us in this offering assuming no exercise by the underwriters of their over-allotment option, for:

- each of our named executive officers;
- each of our directors;
- all of our current directors and executive officers as a group; and
- each person known by us to be the beneficial owner of more than 5% of the outstanding shares of our common stock.

We have determined beneficial ownership in accordance with the rules of the SEC, and thus it represents sole or shared voting or investment power with respect to our securities. Unless otherwise indicated below, to our knowledge, the persons and entities named in the table have sole voting and sole investment power with respect to all shares that they beneficially owned, subject to community property laws where applicable. The information does not necessarily indicate beneficial ownership for any other purpose, including for purposes of Sections 13(d) and 13(g) of the Securities Act.

We have based our calculation of the percentage of beneficial ownership prior to this offering on 79,164,935 shares of our common stock outstanding as of June 17, 2019. We have based our calculation of the percentage of beneficial ownership after this offering on shares of our common stock outstanding immediately after the completion of this offering, assuming no exercise by the underwriters of their over-allotment option. We have deemed shares of our common stock subject to stock options that are currently exercisable or exercisable within 60 days of June 17, 2019, or issuable pursuant to RSUs which are subject to vesting conditions expected to occur within 60 days of June 17, 2019, to be outstanding and to be beneficially owned by the person holding the stock option or RSU for the purpose of computing the percentage ownership of that person. We did not deem these shares outstanding, however, for the purpose of computing the percentage ownership of any other person.
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Unless otherwise indicated, the address of each beneficial owner listed in the table below is c/o Livongo Health, Inc., 150 West Evelyn Avenue, Suite 150, Mountain View, California 94041.

<table>
<thead>
<tr>
<th>Name of Beneficial Owner</th>
<th>Shares Beneficially Owned Prior to the Offering</th>
<th>Shares Beneficially Owned After to the Offering</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of Shares</td>
<td>%</td>
</tr>
<tr>
<td><strong>Named Executive Officers and Directors:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Glen E. Tullman(1)</td>
<td>Held by Mr. Tullman as an individual</td>
<td>3,781,567</td>
</tr>
<tr>
<td></td>
<td>Held by entities affiliated with 7WireVentures</td>
<td>5,641,265</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>9,422,832</td>
</tr>
<tr>
<td>Jennifer Schneider(2)</td>
<td>738,640</td>
<td></td>
</tr>
<tr>
<td>James Pursley(3)</td>
<td>454,319</td>
<td></td>
</tr>
<tr>
<td>Zane Burke(4)</td>
<td>982,301</td>
<td></td>
</tr>
<tr>
<td>Christopher Bischoff(5)</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Philip D. Green(6)</td>
<td>57,291</td>
<td></td>
</tr>
<tr>
<td>Hemant Taneja(7)</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Sandra Fenwick</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>All executive officers and directors as a group (10 persons)(8)</td>
<td>12,496,697</td>
<td>15.0</td>
</tr>
<tr>
<td><strong>5% Stockholders:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Entities affiliated with General Catalyst(9)</td>
<td>20,100,124</td>
<td>25.4</td>
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<tr>
<td>KPCB Holdings, Inc., as nominee(11)</td>
<td>9,512,132</td>
<td>12.0</td>
</tr>
<tr>
<td>Merck Global Health Innovation Fund, LLC(12)</td>
<td>7,035,832</td>
<td>8.9</td>
</tr>
<tr>
<td>Entities affiliated with 7WireVentures(13)</td>
<td>6,027,508</td>
<td>7.6</td>
</tr>
<tr>
<td></td>
<td>5,641,265</td>
<td>7.1</td>
</tr>
</tbody>
</table>

* Represents beneficial ownership of less than one percent (1%) of the outstanding shares of our common stock.

(1) Includes (i) 1,024,163 shares held of record by Mr. Tullman; (ii) 2,757,404 shares subject to options exercisable within 60 days of June 17, 2019; and (iii) 5,641,265 shares disclosed in footnote (13) below which are held of record by entities affiliated with 7WireVentures. Excludes 1,402,820 shares subject to options which vest subject to service-based and performance-based vesting conditions that will not be satisfied within 60 days of June 17, 2019.

(2) Includes 738,640 shares subject to options exercisable within 60 days of June 17, 2019. Excludes 155,000 shares subject to an RSU which vests subject to service-based and performance-based vesting conditions that will not be satisfied within 60 days of June 17, 2019.

(3) Includes (i) 48,800 shares held of record by Mr. Pursley and (ii) 405,519 shares subject to options exercisable within 60 days of June 17, 2019.

(4) All of the shares held by Mr. Burke are subject to repurchase upon the occurrence of certain events as described further in the section entitled “Executive Compensation—Chief Executive Officer Employment Agreement.”

(5) Mr. Bischoff, a member of our board of directors, is a Senior Investment Director at Kinnevik AB. Mr. Bischoff disclaims beneficial ownership of all shares held by Kinnevik Online AB referred to in footnote (10) below.

(6) Includes (i) 19,097 shares subject to options held by The Philip D. Green 2012 Children’s Trust FOB Justin J. Green exercisable within 60 days of June 17, 2019, (ii) 19,097 shares subject to options held by The Philip D. Green 2012 Children’s Trust FOB Alexandra E. Green exercisable within 60 days of June 17, 2019, and (iii) 19,097 shares subject to options held by The Philip D. Green 2012 Children’s Trust FOB Joshua D. Green exercisable within 60 days of June 17, 2019.

(7) Mr. Taneja, a member of our board of directors, is a Managing Director at General Catalyst. Mr. Taneja disclaims beneficial ownership of all shares held by the General Catalyst entities referred to in footnote (9) below.

(8) Includes (i) 8,537,843 shares of common stock beneficially owned by our executive officers and directors and (ii) 3,958,854 shares subject to options exercisable within 60 days of June 17, 2019. Excludes 2,701,371 shares subject to options and RSUs which vest subject to service-based and performance-based vesting conditions that will not be satisfied within 60 days of June 17, 2019.

(9) Consists of (i) 1,024,163 shares held of record by General Catalyst Group VI, L.P., or GC Group VI LP; (ii) 738,640 shares held of record by General Catalyst Group VII, L.P., or GC Group VII LP; and (iii) 1,402,820 shares subject to options which vest subject to service-based and performance-based vesting conditions that will not be satisfied within 60 days of June 17, 2019. Excludes 155,000 shares subject to an RSU which vests subject to service-based and performance-based vesting conditions that will not be satisfied within 60 days of June 17, 2019.

(10) Includes (i) 8,537,843 shares of common stock beneficially owned by our executive officers and directors and (ii) 3,958,854 shares subject to options exercisable within 60 days of June 17, 2019. Excludes 2,701,371 shares subject to options and RSUs which vest subject to service-based and performance-based vesting conditions that will not be satisfied within 60 days of June 17, 2019.

(11) Includes (i) 19,097 shares subject to options held by The Philip D. Green 2012 Children’s Trust FOB Justin J. Green exercisable within 60 days of June 17, 2019, (ii) 19,097 shares subject to options held by The Philip D. Green 2012 Children’s Trust FOB Alexandra E. Green exercisable within 60 days of June 17, 2019, and (iii) 19,097 shares subject to options held by The Philip D. Green 2012 Children’s Trust FOB Joshua D. Green exercisable within 60 days of June 17, 2019.

(12) Includes 738,640 shares subject to options exercisable within 60 days of June 17, 2019. Excludes 155,000 shares subject to an RSU which vests subject to service-based and performance-based vesting conditions that will not be satisfied within 60 days of June 17, 2019.

(13) Includes (i) 1,024,163 shares held of record by Mr. Tullman; (ii) 2,757,404 shares subject to options exercisable within 60 days of June 17, 2019; and (iii) 5,641,265 shares held of record by entities affiliated with 7WireVentures. Excludes 1,402,820 shares subject to options which vest subject to service-based and performance-based vesting conditions that will not be satisfied within 60 days of June 17, 2019.

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over the shares held by GC Group VI, GC Group VIII and GC Group VIII Supplemental. Each of Mr. Chenault, Mr. Cutler, Mr. Fialkow and Mr. Taneja disclaim beneficial ownership of the shares listed here. The address for these entities is 20 University Road, 4th Floor, Cambridge, MA 02138.

(10) Consists of 9,512,132 shares held of record by Kinnevik Online AB, a wholly owned subsidiary of Kinnevik AB, a publicly traded company. The address for these entities is Skeppsbron 18, Box 2094, SE-103 13 Stockholm, Sweden.

(11) Consists of (i) 6,802,946 shares held by Kleiner Perkins Caufield & Byers XVI, LLC (KPCB XVI) and (ii) 232,886 shares held by KPCB XVI Founders Fund, LLC (KPCB XVI FF). All shares are held for convenience in the name of KPCB Holdings, Inc., as nominee for the accounts of such entities. The managing member of KPCB XVI and KPCB XVI FF is KPCB XVI Associates, LLC (KPCB XVI Associates). Beth Seidenberg, L. John Doerr, Randy Komisar, Theodore E. Schlein and Wen Hsieh, the managing members of KPCB XVI Associates, exercise shared voting and dispositive control over the shares held by KPCB XVI and KPCB XVI FF. The address for these entities is c/o Kleiner Perkins Caufield & Byers, LLC, 2750 Sand Hill Road, Menlo Park, California 94025.

(12) Consists of 6,027,508 shares held of record by Merck Global Health Innovation Fund, LLC, a wholly owned subsidiary of Merck Sharp & Dohme Corp., a wholly owned subsidiary of Merck & Co., Inc., a publicly traded company. The address for these entities is 2000 Galloping Hill Road, Kenilworth, New Jersey 07033.

(13) Consists of (i) 3,373,987 shares held of record by 7Wire Ventures LLC—Series EosHealth; (ii) 285,131 shares held of record by 7Wire Ventures LLC—Series Livongo C; (iii) 361,718 shares held of record by 7Wire Ventures LLC—Series Livongo D; (iv) 400,528 shares held of record by 7Wire Ventures LLC—Series Livongo E, collectively, the 7Wire Series; (v) 1,159,901 shares held of record by 7Wire Ventures Fund, L.P., or 7Wire LP, and (vi) 60,000 shares held of record by 7Wire Ventures Wanxiang Strategic Fund I, LLC, or 7Wire Wanxiang. 7Wire Management, LLC, or 7Wire Management serves as the Manager of 7Wire LP and 7Wire Wanxiang. As the Managers of 7Wire Series and 7Wire Management, Robert Garber, Lee Shapiro, our Chief Financial Officer, and Glen Tullman, our Executive Chairman and a member of our board of directors, share voting and dispositive power with respect to the shares held of record by 7Wire Series, 7Wire LP and 7Wire Wanxiang. The address for these entities is 444 N Michigan Avenue, Chicago, Illinois 60611.
DESCRIPTION OF CAPITAL STOCK

General

The following description summarizes certain important terms of our capital stock, as they are expected to be in effect immediately prior to the completion of this offering. We expect to adopt an amended and restated certificate of incorporation and amended and restated bylaws that will become effective immediately prior to the completion of this offering, and this description summarizes the provisions that are expected to be included in such documents. Because it is only a summary, it does not contain all the information that may be important to you. For a complete description of the matters set forth in this section titled “Description of Capital Stock,” you should refer to our amended and restated certificate of incorporation and amended and restated bylaws and fourth amended and restated investors’ rights agreement, which are included as exhibits to the registration statement of which this prospectus forms a part, and to the applicable provisions of Delaware law. Immediately following the completion of this offering, our authorized capital stock will consist of 1,000,000,000 shares of capital stock, $0.001 par value per share, of which:

- 900,000,000 shares are designated as common stock; and
- 100,000,000 shares are designated as preferred stock.

As of March 31, 2019, there were 78,233,411 shares of common stock outstanding, held by 124 stockholders of record, assuming the automatic conversion of all outstanding shares of our redeemable convertible preferred stock into shares of our common stock effective immediately prior to the completion of this offering. Our board of directors is authorized, without stockholder approval except as required by the listing standards of Nasdaq, to issue additional shares of our capital stock.

Common Stock

Voting Rights

The holders of common stock are entitled to one vote per share on all matters submitted to a vote of our stockholders and do not have cumulative voting rights. Accordingly, holders of a majority of the shares of common stock entitled to vote in any election of directors may elect all of the directors standing for election.

Dividend Rights

Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of our common stock are entitled to receive dividends out of funds legally available if our Board of Directors, in its discretion, determines to issue dividends and then only at the times and in the amounts that our Board of Directors may determine. See the section titled “Dividend Policy” for additional information.

No Preemptive or Similar Rights

Our common stock is not entitled to preemptive rights, and is not subject to conversion, redemption, or sinking fund provisions.

Right to Receive Liquidation Distributions

If we become subject to a liquidation, dissolution or winding-up, the assets legally available for distribution to our stockholders would be distributable ratably among the holders of our common stock and any participating preferred stock outstanding at that time, subject to prior satisfaction of all outstanding debt and liabilities and the preferential rights of and the payment of liquidation preferences, if any, on any outstanding shares of preferred stock.
In connection with this offering, our legal counsel will opine that the shares of our common stock to be issued in this offering will be fully paid and non-assessable.

After the completion of this offering, no shares of preferred stock will be outstanding, assuming the automatic conversion of 58,615,488 shares of our redeemable convertible preferred stock outstanding as of March 31, 2019 into an equivalent number of shares of common stock effective immediately prior to the completion of this offering. Our board of directors is authorized, subject to limitations prescribed by Delaware law, to issue preferred stock in one or more series, to establish from time to time the number of shares to be included in each series, and to fix the designation, powers, preferences, and rights of the shares of each series and any of its qualifications, limitations or restrictions, in each case without further vote or action by our stockholders. Our board of directors can also increase or decrease the number of shares of any series of preferred stock, but not below the number of shares of that series then outstanding, without any further vote or action by our stockholders. Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring, or preventing a change in control of our company and might adversely affect the market price of our common stock and the voting and other rights of the holders of our common stock. We have no current plan to issue any shares of preferred stock.

As of March 31, 2019, we had outstanding options to purchase an aggregate of 16,739,586 shares of our common stock, with a weighted-average exercise price of $1.80 per share, under our 2008 Plan and 2014 Plan.

As of March 31, 2019, we had 3,690,243 shares of our common stock subject to RSUs outstanding pursuant to our 2014 Plan.

As of March 31, 2019, we had outstanding warrants to purchase up to 785,000 shares of our common stock, with a weighted-average exercise price of $2.09 per share.

After the completion of this offering, certain holders of our common stock will be entitled to rights with respect to the registration of their shares under the Securities Act. These registration rights are contained in our IRA. We, along with certain holders of our common stock are parties to the IRA. The registration rights set forth in the IRA will expire five years following the completion of this offering. We will pay the registration expenses (other than underwriting discounts, selling commissions and stock transfer taxes) of the holders of the shares registered pursuant to the registrations described below. In addition, in connection with each demand registration and piggyback registration, we will reimburse holders for the reasonable fees and disbursements of one counsel chosen by a majority of the securities included in such registration, not to exceed $50,000. In an underwritten offering, the managing underwriter, if any, has the right, subject to specified conditions, to limit the number of shares such holders may include. We expect that our stockholders will waive their rights under the IRA (i) to notice of this offering and (ii) to include their registrable shares in this offering. In addition, in connection with this offering, we expect that each stockholder that has registration rights will agree not to sell or otherwise
dispose of any securities without the prior written consent of the underwriters for a period of 180 days after the date of this prospectus, subject to certain terms and conditions and early release of certain holders in specified circumstances. See the section titled “Underwriters” for additional information regarding such restrictions.

**Demand Registration Rights**

After the completion of this offering, the holders of up to 65,285,098 shares of our common stock will be entitled to certain demand registration rights (assuming automatic conversion of all outstanding shares of our redeemable convertible preferred stock into shares of common stock immediately prior to the closing of this offering). At any time beginning 180 days after the effective date of this offering, the holders of at least 25% of shares of our common stock then outstanding can request that we register the offer and sale of their shares in an underwritten offering (or a lesser percent if the anticipated offering price, net of underwriting discounts and commissions, would exceed $20,000,000). We are obligated to effect only two such registrations. If we determine that it would be seriously detrimental to our stockholders to effect such a demand registration, we have the right to defer such registration, not more than once in any twelve month period, for a period of up to 90 days.

**Piggyback Registration Rights**

After the completion of this offering, if we propose to register the offer and sale of our common stock under the Securities Act, in connection with the public offering of such common stock the holders of up to 65,285,098 shares of our common stock (assuming automatic conversion of all outstanding shares of our redeemable convertible preferred stock into shares of common stock immediately prior to the closing of this offering) will be entitled to certain “piggyback” registration rights allowing the holders to include their shares in such registration, subject to certain marketing and other limitations. As a result, whenever we propose to file a registration statement under the Securities Act, other than with respect to (1) a registration relating to the sale of securities to our employees or a subsidiary pursuant to a stock option, stock purchase, or similar plan; (2) a registration relating solely to a transaction covered by Rule 145 promulgated under the Securities Act; (3) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the shares; or (4) a registration in which the only common stock being registered is common stock issuable upon conversion of debt securities that are also being registered, the holders of these shares are entitled to notice of the registration and have the right, subject to certain limitations, to include their shares in the registration.

**S-3 Registration Rights**

After the completion of this offering, the holders of up to 65,285,098 shares of our common stock (assuming automatic conversion of all outstanding shares of our redeemable convertible preferred stock into shares of common stock immediately prior to the closing of this offering) may make a written request that we register the offer and sale of their shares on a registration statement on Form S-3 so long as the request is made by holders of at least 15% of shares of our common stock then outstanding and covers at least that number of shares with an anticipated offering price, net of underwriting discounts and commissions, of at least $3,000,000. These stockholders may make an unlimited number of requests for registration on Form S-3; however, we will not be required to effect a registration on Form S-3 if we have effected two such registrations within the twelve month period preceding the date of the request. Additionally, if we determine that it would be seriously detrimental to our stockholders to effect such a registration, we have the right to defer such registration, not more than once in any twelve month period, for a period of up to 90 days.

**Anti-Takeover Provisions**

Certain provisions of Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws, which are summarized below, may have the effect of delaying, deferring, or discouraging
another person from acquiring control of us. They are also designed, in part, to encourage persons seeking to acquire control of us to negotiate first with our board of directors. We believe that the benefits of increased protection of our potential ability to negotiate with an unfriendly or unsolicited acquirer outweigh the disadvantages of discouraging a proposal to acquire us because negotiation of these proposals could result in an improvement of their terms.

**Delaware Law**

We will be governed by the provisions of Section 203 of the Delaware General Corporation Law. In general, Section 203 prohibits a public 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 transaction was approved by the board of directors prior to the time that the stockholder became an interested stockholder;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding shares owned by directors who are also officers of the corporation and shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- at or subsequent to the time the stockholder became an interested stockholder, the business combination was approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

In general, Section 203 defines a “business combination” to include mergers, asset sales, and other transactions resulting in financial benefit to a stockholder and an “interested stockholder” as a person who, together with affiliates and associates, owns, or, within three years, did own, 15% or more of the corporation’s outstanding voting stock. These provisions may have the effect of delaying, deferring, or preventing changes in control of our company.

**Amended and Restated Certificate of Incorporation and Amended and Restated Bylaw Provisions**

Our amended and restated certificate of incorporation and our amended and restated bylaws will include a number of provisions that could deter hostile takeovers or delay or prevent changes in control of our board of directors or management team, including the following:

- **Board of Directors Vacancies.** Our amended and restated certificate of incorporation and amended and restated bylaws will authorize only our board of directors to fill vacant directorships, including newly created seats. In addition, the number of directors constituting our board of directors will be permitted to be set only by a resolution adopted by a majority vote of our entire board of directors. These provisions would prevent a stockholder from increasing the size of our board of directors and then gaining control of our board of directors by filling the resulting vacancies with its own nominees. This will make it more difficult to change the composition of our board of directors and will promote continuity of management.

- **Classified Board.** Our amended and restated certificate of incorporation and amended and restated bylaws will provide that our board of directors is classified into three classes of directors. A third party may be discouraged from making a tender offer or otherwise attempting to obtain control of us as it is more difficult and time consuming for stockholders to replace a majority of the directors on a classified board of directors. See the section titled “Management—Classified Board of Directors.”
Stockholder Action; Special Meeting of Stockholders. Our amended and restated certificate of incorporation will provide that our stockholders may not take action by written consent, but may only take action at annual or special meetings of our stockholders. As a result, a holder controlling a majority of our capital stock would not be able to amend our amended and restated bylaws or remove directors without holding a meeting of our stockholders called in accordance with our amended and restated bylaws. Our amended and restated bylaws will further provide that special meetings of our stockholders may be called only by a majority of our board of directors, the chairman of our board of directors, our Chief Executive Officer or our President, thus prohibiting a stockholder from calling a special meeting. These provisions might delay the ability of our stockholders to force consideration of a proposal or for stockholders controlling a majority of our capital stock to take any action, including the removal of directors.

Advance Notice Requirements for Stockholder Proposals and Director Nominations. Our amended and restated bylaws will provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at our annual meeting of stockholders. Our amended and restated bylaws will also specify certain requirements regarding the form and content of a stockholder's notice. These provisions might preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders if the proper procedures are not followed. We expect that these provisions may also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company.

No Cumulative Voting. The Delaware General Corporation Law provides that stockholders are not entitled to cumulate votes in the election of directors unless a corporation's certificate of incorporation provides otherwise. Our amended and restated certificate of incorporation does not provide for cumulative voting.

Directors Removed Only for Cause. Our amended and restated certificate of incorporation will provide that stockholders may remove directors only for cause.

Amendment of Charter and Bylaws Provisions. Any amendment of the above provisions in our amended and restated certificate of incorporation and amended and restated bylaws would require approval by holders of at least 66% of our then outstanding capital stock.

Issuance of Undesignated Preferred Stock. Our board of directors will have the authority, without further action by the stockholders, to issue up to 100,000,000 shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by our board of directors. The existence of authorized but unissued shares of preferred stock would enable our board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest, or other means.

Exclusive Forum

Our amended and restated bylaws will provide that, unless we consent in writing to the selection of an alternative forum, the sole and exclusive forum for the following types of actions or proceedings under Delaware statutory or common law: (1) any derivative action or proceeding brought on our behalf, (2) 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, (3) any action asserting a claim against the company or any director or officer of the company arising pursuant to any provision of the Delaware General Corporation Law, (4) any action to interpret, apply, enforce or determine the validity of our amended and restated certificate of incorporation or amended and restated bylaws, or (5) any other action asserting a claim that is governed by the internal affairs doctrine shall be a state or federal court located within the State of Delaware, in all cases subject to the court's having jurisdiction over indispensable parties named as defendants. This exclusive forum provision will not apply to any causes of
action arising under the Securities Act or the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. Any person or entity purchasing or otherwise acquiring any interest in our shares of capital stock shall be deemed to have notice of and consented to this provision. Although we believe these provisions benefit us by providing increased consistency in the application of Delaware law for the specified types of actions and proceedings, the provisions may have the effect of discouraging lawsuits against us or our directors and officers.

Transfer Agent and Registrar

Upon completion of this offering, the transfer agent and registrar for our common stock will be Broadridge Corporate Issuer Solutions, Inc. The transfer agent and registrar’s address is 1717 Arch St., Suite 1300, Philadelphia, Pennsylvania 19103.

Limitations of Liability and Indemnification

See the section titled “Certain Relationships and Related Party Transactions-Limitation of Liability and Indemnification of Officers and Directors.”

Listing

We have applied to list our common stock on The Nasdaq Global Select Market under the symbol “LVGO.”
SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock, and we cannot predict the effect, if any, that market sales of shares of our common stock or the availability of shares of our common stock for sale will have on the market price of our common stock prevailing from time to time. Future sales of our common stock in the public market, or the availability of such shares for sale in the public market, could adversely affect market prices prevailing from time to time. As described below, only a limited number of shares of our common stock will be available for sale shortly after this offering due to contractual and legal restrictions on resale. Nevertheless, sales of our common stock in the public market after such restrictions lapse, or the perception that those sales may occur, could adversely affect the prevailing market price at such time and our ability to raise equity capital in the future.

Following the completion of this offering, based on the number of shares of our capital stock outstanding as of March 31, 2019, we will have a total of [number] shares of common stock outstanding, after giving effect to the automatic conversion of 58,615,488 shares of our redeemable convertible preferred stock outstanding as of March 31, 2019 into an equivalent number of common stock immediately prior to the closing of this offering. Of these outstanding shares, all of the shares of common stock sold in this offering will be freely tradable, except that any shares purchased in this offering by our affiliates, as that term is defined in Rule 144 under the Securities Act, would only be able to be sold in compliance with the Rule 144 limitations described below.

The remaining outstanding shares of our common stock will be, and shares underlying outstanding RSUs and shares subject to stock options will be upon issuance, deemed “restricted securities” as defined in Rule 144 under the Securities Act. Restricted securities may be sold in the public market only if they are registered or if they qualify for an exemption from registration under Rule 144 or Rule 701, which rules are summarized below. All of our executive officers, directors and holders of substantially all of our capital stock and securities convertible into or exchangeable for our capital stock have entered into market-standoff agreements with us or lock-up agreements with the underwriters under which they have agreed, subject to specific exceptions, not to sell any of our stock for 180 days following the date of this prospectus. As a result of these agreements and the provisions of our IRA described above under the section titled “Description of Capital Stock—Registration Rights,” and subject to the provisions of Rule 144 or Rule 701, shares of our common stock will be available for sale in the public market as follows:

- beginning on the date of this prospectus, the shares of our common stock sold in this offering will be immediately available for sale in the public market; and
- beginning 181 days after the date of this prospectus, subject to extension as described in “Underwriters” below, additional shares of capital stock will become eligible for sale in the public market, of which shares will be held by affiliates and subject to the volume and other restrictions of Rule 144, as described below.

Lock-Up Agreements and Market Standoff Provisions

In connection with this offering, we, our executive officers, directors, and substantially all holders of our capital stock and securities convertible into or exchangeable for our capital stock are subject to market standoff agreements with us or have agreed or will agree to enter into lock-up agreements with the underwriters agreeing, subject to certain exceptions, not, without the prior written consent of Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC, and J.P. Morgan Securities LLC, on behalf of the underwriters, dispose of or hedge any shares or any securities convertible into or exchangeable for shares of our capital stock for a period of 180 days after the date of this prospectus. See the section titled “Underwriters” for additional information.

In addition to the restrictions contained in the lock-up agreements described above, we have entered into agreements with certain securityholders, including the IRA and our standard form of option agreement and
common stock purchase agreement, that certain market stand-off provisions imposing restrictions on the ability of such securityholders to offer, sell or transfer our equity securities for a period of 180 days following the date of this prospectus.

We will also enter into a lock-up agreement with the underwriters under which we will agree not to sell any of our stock for 180 days following the date of this prospectus, subject to certain exceptions.

Rule 144

In general, under Rule 144 as currently in effect, once we have been subject to the public company reporting requirements of Section 13 or Section 15(d) of the Exchange Act for at least 90 days, a person who is not deemed to have been one of our affiliates for purposes of the Securities Act at any time during the 90 days preceding a sale and who has beneficially owned the shares of our common stock proposed to be sold for at least six months is entitled to sell those shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, subject to compliance with the public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then that person would be entitled to sell those shares without complying with any of the requirements of Rule 144.

In general, under Rule 144, as currently in effect, our affiliates or persons selling shares of our common stock on behalf of our affiliates are entitled to sell upon expiration of the market-standoff agreements and lock-up agreements described above, within any three-month period, a number of shares that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal shares immediately after this offering; or
- the average weekly trading volume of our common stock during the four calendar weeks preceding the filing of a notice on Form 144 with respect to that sale.

Sales under Rule 144 by our affiliates or persons selling shares of our common stock on behalf of our affiliates are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about us.

Rule 701

Rule 701 generally allows a stockholder who purchased shares of our capital stock pursuant to a written compensatory plan or contract and who is not deemed to have been an affiliate of our company during the immediately preceding 90 days to sell these shares in reliance upon Rule 144, but without being required to comply with the public information, holding period, volume limitation or notice provisions of Rule 144. Rule 701 also permits affiliates of our company to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. All holders of Rule 701 shares, however, are required to wait until 90 days after the date of this prospectus before selling those shares pursuant to Rule 701.

Registration Rights

Pursuant to the IRA, the holders of up to 65,285,098 shares of our common stock (assuming automatic conversion of all outstanding shares of our redeemable convertible preferred stock into shares of common stock immediately prior to the closing of this offering), or their transferees, will be entitled to certain rights with respect to the registration of the offer and sale of those shares under the Securities Act. See the section titled “Description of Capital Stock—Registration Rights” for a description of these registration rights. If the offer and sale of these shares is registered, the shares will be freely tradable without restriction under the Securities Act, and a large number of shares may be sold into the public market.
Registration Statement on Form S-8

We intend to file a registration statement on Form S-8 under the Securities Act promptly after the completion of this offering to register shares of our common stock subject to RSUs and options outstanding, as well as reserved for future issuance, under our equity compensation plans and the equity compensation plans we assumed in connection with certain of our acquisitions. The registration statement on Form S-8 is expected to become effective immediately upon filing, and shares covered by the registration statement will then become eligible for sale in the public market, subject to the Rule 144 limitations applicable to affiliates, vesting restrictions and any applicable market standoff agreements and lock-up agreements. See the section titled “Executive Compensation—Employee Benefits and Stock Plans” for a description of our equity compensation plans.
MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO
NON-U.S. HOLDERS OF OUR COMMON STOCK

The following is a summary of the material U.S. federal income tax consequences to certain non-U.S. holders (as defined below) of the ownership and disposition of our common stock but does not purport to be a complete analysis of all the potential tax considerations relating thereto. This summary is based upon the provisions of the Code, Treasury Regulations promulgated thereunder, administrative rulings and judicial decisions, all as of the date hereof. These authorities may be changed, possibly retroactively, so as to result in U.S. federal income tax consequences different from those set forth below. No ruling from the United States Internal Revenue Service, or IRS, has been, or will be, sought with respect to the tax consequences discussed herein, and there can be no assurance that the IRS will not take a position contrary to the tax consequences discussed below or that any position taken by the IRS would not be sustained.

This summary applies only to common stock acquired in this offering by certain non-U.S. holders. It does not address the tax considerations arising under the laws of any non-U.S., state or local jurisdiction, or under U.S. federal gift and estate tax laws. In addition, this discussion does not address the application of the Medicare contribution tax on net investment income or any tax considerations applicable to a non-U.S. holder's particular circumstances or to non-U.S. holders that may be subject to special tax rules, including, without limitation:

- banks, insurance companies or other financial institutions (except to the extent specifically set forth below), regulated investment companies or real estate investment trusts;
- persons subject to the alternative minimum tax;
- tax-exempt organizations or governmental organizations;
- tax-qualified retirement plans;
- controlled foreign corporations, passive foreign investment companies or corporations that accumulate earnings to avoid U.S. federal income tax;
- brokers or dealers in securities or currencies;
- traders in securities or other persons that elect to use a mark-to-market method of accounting for their holdings in our common stock;
- U.S. expatriates or certain former citizens or long-term residents of the United States;
- partnerships or entities classified as partnerships for U.S. federal income tax purposes or other pass-through entities (and investors therein);
- persons who hold our common stock as a position in a hedging transaction, “straddle,” “conversion transaction,” or other risk reduction transaction or integrated investment;
- persons who do not hold our common stock as a capital asset within the meaning of Section 1221 of the Code;
- persons that own or have owned (actually or constructively) more than five percent of our common stock (except to the extent specifically set forth below);
- persons subject to special tax accounting rules as a result of any item of gross income with respect to the common stock being taken into account in an “applicable financial statement” (as defined in Section 451(b)(3) of the Code); or
- persons deemed to sell our common stock under the constructive sale provisions of the Code.

In addition, if a partnership or entity classified as a partnership for U.S. federal income tax purposes holds our common stock, the tax treatment of a partner generally will depend on the status of the partner and upon the activities of the partnership. Accordingly, partnerships that hold our common stock, and partners in such partnerships, should consult their tax advisors about the particular U.S. federal income tax consequences to them of acquiring, holding and disposing of our common stock.
You are urged to consult your tax advisor with respect to the application of the U.S. federal income tax laws to your particular situation, as well as any tax consequences of the acquisition, ownership and disposition of our common stock arising under the U.S. federal estate or gift tax rules or under the laws of any state, local, non-U.S., or other taxing jurisdiction or under any applicable tax treaty.

Non-U.S. Holder Defined

For purposes of this discussion, you are a non-U.S. holder if you are a holder of our common stock that is not a partnership (or entity or arrangement treated as a partnership for U.S. federal income tax purposes) and is not any of the following:

- an individual who is a citizen or resident of the United States (for U.S. federal income tax purposes);
- a corporation or other entity taxable as a corporation created or organized in the United States or under the laws of the United States or any political subdivision thereof or other entity treated as such for U.S. federal income tax purposes;
- an estate whose income is subject to U.S. federal income tax regardless of its source; or
- a trust (x) whose administration is subject to the primary supervision of a U.S. court and which has one or more “United States persons” (within the meaning of Section 7701(a)(30) of the Code) who have the authority to control all substantial decisions of the trust or (y) which has made a valid election to be treated as a “United States person.”

Distributions

As described in the section “Dividend Policy,” we have never declared or paid cash dividends on our capital stock and do not anticipate paying any dividends on our capital stock in the foreseeable future. However, if we do make distributions on our common stock, those payments will constitute dividends for U.S. tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. To the extent those distributions exceed both our current and our accumulated earnings and profits, they will constitute a return of capital and will first reduce your basis in our common stock, but not below zero, and then will be treated as gain from the sale of stock as described below under “—Gain on Disposition of Our Common Stock.”

Except as otherwise described below in the discussions of effectively connected income (in the next paragraph), backup withholding and FATCA, any dividend paid to you generally will be subject to U.S. withholding tax either at a rate of 30% of the gross amount of the dividend or such lower rate as may be specified by an applicable income tax treaty. In order to receive a reduced treaty rate, you must provide us, or our paying agent, with an IRS Form W-8BEN, IRS Form W-8BEN-E or other appropriate version of IRS Form W-8, including any required attachments and your taxpayer identification number, certifying qualification for the reduced rate; additionally you will be required to update such forms and certifications from time to time as required by law. A non-U.S. holder of shares of our common stock eligible for a reduced rate of U.S. withholding tax pursuant to an income tax treaty may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. If the non-U.S. holder holds the stock through a financial institution or other agent acting on the non-U.S. holder’s behalf, the non-U.S. holder will be required to provide appropriate documentation to the agent, which then will be required to provide certification to us or our paying agent, either directly or through other intermediaries. Non-U.S. holders should consult their tax advisors regarding their entitlement to benefits under an applicable income tax treaty.

Dividends received by you that are effectively connected with your conduct of a U.S. trade or business (and, if required by an applicable income tax treaty, attributable to a permanent establishment maintained by you in the United States) are generally exempt from the 30% withholding tax if you satisfy applicable certification and disclosure requirements. In order to obtain this exemption, you must provide us, or our paying agent, with an IRS
Form W-8ECI or other applicable IRS Form W-8, including any required attachments and your U.S. taxpayer identification number; additionally you will be required to update such forms and certifications from time to time as required by law. Such effectively connected dividends, although not subject to withholding tax, are includable on your U.S. income tax return and generally taxed to you at the same graduated rates applicable to U.S. persons, net of certain deductions and credits. If you are a corporate non-U.S. holder, earnings and profits (including any dividends you receive) which are attributable to income which is effectively connected with your conduct of a U.S. trade or business may also be subject to a branch profits tax at a rate of 30% or such lower rate as may be specified by an applicable income tax treaty. You should consult your tax advisor regarding any applicable tax treaties that may provide for different rules.

Gain on Disposition of Our Common Stock

Except as otherwise described below in the discussions of backup withholding and FATCA, you generally will not be subject to U.S. federal income tax on any gain realized upon the sale or other disposition of our common stock unless:

- the gain is effectively connected with your conduct of a U.S. trade or business (and, if required by an applicable income tax treaty, the gain is attributable to a permanent establishment maintained by you in the United States);
- you are a non-resident alien individual who is present in the United States for a period or periods aggregating 183 days or more during the calendar year in which the sale or disposition occurs, and other conditions are met; or
- our common stock constitutes a United States real property interest by reason of our status as a “United States real property holding corporation,” or USRPHC, for U.S. federal income tax purposes at any time within the shorter of the five-year period preceding your disposition of, or your holding period for, our common stock, and, in the case where shares of our common stock are regularly traded on an established securities market, you own (actually or constructively) more than 5% of our common stock at any time during the foregoing period.

Generally, a corporation is a “United States real property holding corporation” if the fair market value of its United States real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests and its other assets used or held for use in a trade or business (all as determined for United States federal income tax purposes). We believe that we are not currently and will not become a USRPHC for U.S. federal income tax purposes, and the remainder of this discussion assumes this is the case. However, because the determination of whether we are a USRPHC depends on the fair market value of our United States real property interests relative to the fair market value of our other business assets, there can be no assurance that we will not become a USRPHC in the future. Even if we become a USRPHC, however, as long as our common stock is regularly traded on an established securities market, such common stock will be treated as United States real property interests only if you actually or constructively hold more than 5% of such regularly traded common stock at any time during the shorter of the five-year period preceding your disposition of, or your holding period for, our common stock. No assurance can be provided that our common stock will be regularly traded on an established securities market at all times for purposes of the rules described above. Prospective investors are encouraged to consult their own tax advisors regarding the possible consequences to them if we are, or were to become, a USRPHC. If you are a non-U.S. holder described in the first bullet above, you will generally be required to pay tax on the net gain derived from the sale under regular graduated U.S. federal income tax rates (and a corporate non-U.S. holder described in the first bullet above also may be subject to the branch profits tax at a 30% rate), unless otherwise provided by an applicable income tax treaty. If you are a non-U.S. holder described in the second bullet above, you will generally be required to pay a flat 30% tax (or such lower rate specified by an applicable income tax treaty) on the gain derived from the sale, which gain may be offset by U.S. source capital losses for the year (provided you have timely filed U.S. federal income tax returns with respect to such losses). You should consult your tax advisor with respect to whether any applicable income tax or other treaties may provide for different rules.
Backup Withholding and Information Reporting

Generally, we must report annually to the IRS the amount of distributions paid to you, your name and address and the amount of tax withheld, if any. A similar report will be sent to you. Pursuant to applicable income tax treaties or other agreements, the IRS may make these reports available to tax authorities in your country of residence.

Payments of distributions or of proceeds on the disposition of stock made to you may be subject to information reporting and backup withholding at a current rate of 24% unless you establish an exemption, for example, by properly certifying your non-U.S. status on an IRS Form W-8BEN, IRS Form W-8BEN-E or another appropriate version of IRS Form W-8. Notwithstanding the foregoing, backup withholding and information reporting may apply if either we or our paying agent has actual knowledge, or reason to know, that you are a United States person as defined under the Code.

Backup withholding is not an additional tax; rather, the U.S. federal income tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund or credit may generally be obtained from the IRS, provided that the required information is furnished to the IRS in a timely manner.

FATCA

The Foreign Account Tax Compliance Act and the rules and regulations promulgated thereunder, collectively, FATCA, generally imposes withholding tax at a rate of 30% on dividends on, and, subject to the discussion of certain proposed Treasury Regulations below, gross proceeds from the sale or other disposition of our common stock paid to a foreign entity unless (i) if the foreign entity is a “foreign financial institution” (as specially defined under these rules), such foreign entity undertakes certain due diligence, reporting, withholding and certification obligations, (ii) if the foreign entity is not a “foreign financial institution,” such foreign entity identifies and provides certain information with respect to its direct or indirect “substantial United States owners” (as specially defined under these rules) or certifies that there are none, or (iii) the foreign entity otherwise establishes an exemption from FATCA. The withholding provisions under FATCA generally apply to dividends on our common stock. The Treasury Secretary has issued proposed regulations which, if finalized in their present form, would eliminate the withholding provisions under FATCA with respect to gross proceeds from a sale or other disposition of our common stock; the U.S. Treasury has provided that such proposed regulations may be relied upon by taxpayers until final regulations are issued. An intergovernmental agreement between the United States and your country of tax residence may modify the requirements described in this paragraph. Non-U.S. holders should consult their own tax advisors regarding the possible implications of FATCA on their investment in our common stock.

Each prospective investor should consult its own tax advisor regarding the particular U.S. federal, state and local and non-U.S. tax consequences of purchasing, holding and disposing of our common stock, including the consequences of any proposed change in applicable laws.
## UNDERWRITERS

Under the terms and subject to the conditions in an underwriting agreement dated the date of this prospectus, the underwriters named below, for whom Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC, and J.P. Morgan Securities LLC are acting as representatives, have severally agreed to purchase, and we have agreed to sell to them, severally, the number of shares indicated below:

<table>
<thead>
<tr>
<th>Name</th>
<th>Number of Shares</th>
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<tbody>
<tr>
<td>Morgan Stanley &amp; Co. LLC</td>
<td></td>
</tr>
<tr>
<td>Goldman Sachs &amp; Co. LLC</td>
<td></td>
</tr>
<tr>
<td>J.P. Morgan Securities LLC</td>
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<tr>
<td>Piper Jaffray &amp; Co.</td>
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<tr>
<td>SVB Leerink LLC</td>
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<tr>
<td>Canaccord Genuity LLC</td>
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<tr>
<td>KeyBanc Capital Markets Inc.</td>
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<tr>
<td>Needham &amp; Company, LLC</td>
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<tr>
<td><strong>Total:</strong></td>
<td><strong>Total:</strong></td>
</tr>
</tbody>
</table>

The underwriters and the representatives are collectively referred to as the “underwriters” and the “representatives,” respectively. The underwriters are offering the shares of common stock subject to their acceptance of the shares from us and subject to prior sale. The underwriting agreement provides that the obligations of the several underwriters to pay for and accept delivery of the shares of common stock offered by this prospectus are subject to the approval of certain legal matters by their counsel and to certain other conditions. The underwriters are obligated to take and pay for all of the shares of common stock offered by this prospectus if any such shares are taken. However, the underwriters are not required to take or pay for the shares covered by the underwriters’ over-allotment option described below. The offering of the shares of common stock by the underwriters is subject to receipt and acceptance and subject to the underwriters’ right to reject any order in whole or in part.

The underwriters initially propose to offer part of the shares of common stock directly to the public at the offering price listed on the cover page of this prospectus and part to certain dealers. After the initial offering of the shares of common stock, the offering price and other selling terms may from time to time be varied by the representatives.

We have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to additional shares of common stock at the public offering price listed on the cover page of this prospectus, less underwriting discounts and commissions. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with the offering of the shares of common stock offered by this prospectus. To the extent the option is exercised, each underwriter will become obligated, subject to certain conditions, to purchase about the same percentage of the additional shares of common stock as the number listed next to the underwriter’s name in the preceding table bears to the total number of shares of common stock listed next to the names of all underwriters in the preceding table.
The following table shows the per share and total public offering price, underwriting discounts and commissions, and proceeds before expenses to us. These amounts are shown assuming both no exercise and full exercise of the underwriters' over-allotment option.

<table>
<thead>
<tr>
<th></th>
<th>Per Share</th>
<th>No Exercise</th>
<th>Full Exercise</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public offering price</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Underwriting discounts and commissions to be paid by us</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Proceeds, before expenses, to us</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

The estimated offering expenses payable by us, exclusive of the underwriting discounts and commissions, are approximately $ . We have also agreed to reimburse the underwriters for expense relating to clearance of this offering with the Financial Industry Regulatory Authority up to $ .

The underwriters have informed us that they do not intend sales to discretionary accounts to exceed 5% of the total number of shares of common stock offered by them.

We have applied to list our common stock on The Nasdaq Global Select Market under the trading symbol “LVGO.”

We and all of our directors and officers and the holders of substantially all of our outstanding securities have agreed that, without the prior written consent of Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC, and J.P. Morgan Securities LLC on behalf of the underwriters, we and they will not, and will not publicly disclose an intention to, during the period ending 180 days after the date of this prospectus (the “restricted period”):

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, hedge, lend or otherwise transfer or dispose of, directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for shares of common stock;
- submit or file any registration statement with the SEC relating to the offering of any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock; or
- enter into any swap, hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock.

whether any such transaction described above is to be settled by delivery of common stock or such other securities, in cash or otherwise. In addition, we and each such person have agreed that, without the prior written consent of Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC, and J.P. Morgan Securities LLC on behalf of the underwriters, we or such other person will not, during the restricted period, make any demand for, or exercise any right with respect to, the registration of any shares of common stock or any security convertible into or exercisable or exchangeable for common stock.

The restrictions described in the immediately preceding paragraph do not apply to our directors, officers and securityholders with respect to:

- transfers of our common stock acquired in open market transactions after the completion of this offering;
- transfers of our common stock as bona fide gifts, provided no filing under Section 16(a) of the Exchange Act or other public announcement shall be required or voluntarily made during the restricted period and shall not involve a disposition for value;
- distributions of our common stock to partners or stockholders of the securityholder, members, beneficiaries or other equity holders, or to another corporation, partnership, limited liability company,
trust, or other business entity that is an affiliate of the securityholder, or to any investment fund or other entity controlled or managed by
the securityholder, provided no filing under Section 16(a) of the Exchange Act or other public announcement shall be required or
voluntarily made during the restricted period and shall not involve a disposition for value;

• transfers of our common stock to an immediate family member or to certain trusts, or transfers of our common stock in any transaction not
involving a change in beneficial ownership, provided no filing under Section 16(a) of the Exchange Act or other public announcement
shall be required or voluntarily made during the restricted period and shall not involve a disposition for value;

• transfers of our common stock by will or intestate succession upon death, provided no filing under Section 16(a) of the Exchange Act or
other public announcement shall be required or voluntarily made during the restricted period and shall not involve a disposition for value;

• transfers of our common stock to us in connection with the “net” or “cashless” exercise or settlement of stock options, warrants or other
equity awards pursuant to an equity incentive plan described in this prospectus, provided that no filing under Section 16(a) of the
Exchange Act or other public filing, report or announcement reporting a reduction in beneficial ownership of shares of common stock shall
be required or shall be voluntarily made within 30 days following the date of the final prospectus;

• transfers of our common stock to us pursuant to any contractual arrangement that provides us with an option to repurchase common stock
described in this prospectus in connection with the termination of services of such securityholder, provided that no filing under Section
16(a) of the Exchange Act would be required or voluntarily made within 60 days after such termination of services;

• transfers of our common stock pursuant to a bona fide third-party tender offer, merger, consolidation, or other similar transaction involving
a change of control that is approved by our board of directors, provided any required filing or other public announcement under Section
16(a) of the Exchange Act or otherwise shall clearly indicate in the footnotes regarding the circumstances of such transfer;

• transfers of our common stock in connection with the conversion of our outstanding convertible preferred stock into common stock prior to
or in connection with the closing of this offering, provided any required filing or other public announcement under Section 16(a) of the
Exchange Act or otherwise shall clearly indicate in the footnotes regarding the circumstances of such transfer;

• transfers of our common stock by operation of law, such as pursuant to a qualified domestic order or in connection with a divorce
settlement, provided any required filing or other public announcement under Section 16(a) of the Exchange Act or otherwise shall clearly
indicate in the footnotes regarding the circumstances of such transfer;

• the receipt from us of our common stock in connection with the exercise of options or vesting and settlement of restricted stock units or
other rights granted under a stock incentive plan or other equity award plan, provided any common stock issued shall remain subject to the
lock-up agreement, no filing under Section 16(a) of the Exchange Act or other public filing, report, or announcement reporting a reduction
in beneficial ownership of shares of common stock shall be required or shall be voluntarily made within 30 days following the date of the
final prospectus; or

• the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of common stock, provided such plan
does not provide for the transfer of common stock during the restricted period and any required filing or other public announcement under
Section 16(a) of the Exchange Act or otherwise shall indicate in the footnotes that no transfers are to be made under the plan during the
restricted period.

Certain of these exceptions are subject to a requirement that the transferee enter into a lock-up agreement with the underwriters containing similar
restrictions.
Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC, and J.P. Morgan Securities LLC, in their sole discretion, may release the common stock and other securities subject to the lock-up agreements described above in whole or in part at any time.

In order to facilitate the offering of the common stock, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock. Specifically, the underwriters may sell more shares than they are obligated to purchase under the underwriting agreement, creating a short position. A short sale is covered if the short position is no greater than the number of shares available for purchase by the underwriters under the over-allotment option. The underwriters can close out a covered short sale by exercising the over-allotment option or purchasing shares in the open market. In determining the source of shares to close out a covered short sale, the underwriters will consider, among other things, the open market price of shares compared to the price available under the over-allotment option. The underwriters may also sell shares in excess of the over-allotment option, creating a naked short position. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in this offering. As an additional means of facilitating this offering, the underwriters may bid for, and purchase, shares of common stock in the open market to stabilize the price of the common stock. These activities may raise or maintain the market price of the common stock above independent market levels or prevent or retard a decline in the market price of the common stock. The underwriters are not required to engage in these activities and may end any of these activities at any time.

We and the underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

A prospectus in electronic format may be made available on websites maintained by one or more underwriters, or selling group members, if any, participating in this offering. The representatives may agree to allocate a number of shares of common stock to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated by the representatives to underwriters that may make Internet distributions on the same basis as other allocations.

Other Relationships

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. Certain of the underwriters and their respective affiliates have, from time to time, performed, and may in the future perform, various financial advisory and investment banking services for us, for which they received or will receive customary fees and expenses.

In addition, in the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve our securities and instruments. The underwriters and their respective affiliates may also make investment recommendations or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long or short positions in such securities and instruments.

Pricing of the Offering

Prior to this offering, there has been no public market for our common stock. The initial public offering price was determined by negotiations between us and the representatives. Among the factors considered in
determining the initial public offering price were our future prospects and those of our industry in general, our sales, earnings and certain other financial and operating information in recent periods, and the price-earnings ratios, price-sales ratios, market prices of securities, and certain financial and operating information of companies engaged in activities similar to ours.

Selling Restrictions

**European Economic Area**

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a “Relevant Member State”) an offer to the public of any shares of our common stock may not be made in that Relevant Member State, except that an offer to the public in that Relevant Member State of any shares of our common stock may be made at any time under the following exemptions under the Prospectus Directive:

(a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;

(b) to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), subject to obtaining the prior consent of the representatives for any such offer; or

(c) in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of shares of our common stock shall result in a requirement for the publication by us or any underwriter of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an “offer to the public” in relation to any shares of our common stock in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares of our common stock to be offered so as to enable an investor to decide to purchase any shares of our common stock, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State, the expression “Prospectus Directive” means Directive 2003/71/EC (as amended), including by Directive 2010/73/EU, and includes any relevant implementing measure in the Relevant Member State.

This European Economic Area selling restriction is in addition to any other selling restrictions set out below.

**United Kingdom**

Each underwriter has represented and agreed that:

(a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000, or the FSMA, received by it in connection with the issue or sale of the shares of our common stock in circumstances in which Section 21(1) of the FSMA does not apply to us; and

(b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the shares of our common stock in, from or otherwise involving the United Kingdom.

**Canada**

The shares may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of
the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any resale of the shares must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus supplement or the accompanying prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser’s province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser’s province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 (or, in the case of securities issued or guaranteed by the government of a non-Canadian jurisdiction, section 3A.4) of National Instrument 33-105 Underwriting Conflicts (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

Russia

Under Russian law, shares of common stock may be considered securities of a foreign issuer. Neither we, nor this prospectus, nor shares of our common stock have been, or are intended to be, registered with the Central Bank of the Russian Federation under the Federal Law No. 39-FZ “On Securities Market” dated April 22, 1996 (as amended, the “Russian Securities Law”), and none of the shares of our common stock are intended to be, or may be offered, sold or delivered, directly or indirectly, or offered or sold to any person for reoffering or re-sale, directly or indirectly, in the territory of the Russian Federation or to any resident of the Russian Federation, except pursuant to the applicable laws and regulations of the Russian Federation.

The information provided in this prospectus does not constitute any representation with respect to the eligibility of any recipients of this prospectus to acquire shares of our common stock under the laws of the Russian Federation, including, without limitation, the Russian Securities Law and other applicable legislation.

This prospectus is not to be distributed or reproduced (in whole or in part) in the Russian Federation by the recipients of this prospectus. Recipients of this prospectus undertake not to offer, sell or deliver, directly or indirectly, or offer or sell to any person for reoffering or re-sale, directly or indirectly, shares of our common stock in the territory of the Russian Federation or to any resident of the Russian Federation, except pursuant to the applicable laws and regulations of the Russian Federation.

Recipients of this prospectus understand that respective receipt/acquisition of shares of our common stock is subject to restrictions and regulations applicable from the Russian law perspective.

Switzerland

The shares of common stock may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange, or SIX, or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland. Neither this document nor any other offering or marketing material relating to the offering, us, or the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA, or FINMA,
and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes, or CISA. The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

**Dubai International Financial Centre**

This prospectus relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority, or DFSA. This prospectus is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. If not delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus nor taken steps to verify the information set forth herein and has no responsibility for the prospectus. The shares to which this prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares offered should conduct their own due diligence on the shares. If you do not understand the contents of this prospectus you should consult an authorized financial advisor.

**Australia**

No placement document, prospectus, product disclosure statement or other disclosure document has been lodged with the Australian Securities and Investments Commission, or ASIC, in relation to the offering. This prospectus does not constitute a prospectus, product disclosure statement or other disclosure document under the Corporations Act 2001, or the Corporations Act, and does not purport to include the information required for a prospectus, product disclosure statement or other disclosure document under the Corporations Act.

Any offer in Australia of the shares may only be made to persons, or the Exempt Investors, who are “sophisticated investors” (within the meaning of section 708(8) of the Corporations Act), “professional investors” (within the meaning of section 708(11) of the Corporations Act) or otherwise pursuant to one or more exemptions contained in section 708 of the Corporations Act so that it is lawful to offer the shares without disclosure to investors under Chapter 6D of the Corporations Act.

The shares applied for by Exempt Investors in Australia must not be offered for sale in Australia in the period of 12 months after the date of allotment under the offering, except in circumstances where disclosure to investors under Chapter 6D of the Corporations Act would not be required pursuant to an exemption under section 708 of the Corporations Act or where the offer is pursuant to a disclosure document which complies with Chapter 6D of the Corporations Act. Any person acquiring shares must observe such Australian on-sale restrictions.

This prospectus contains general information only and does not take into account the investment objectives, financial situation or particular needs of any particular person. It does not contain any securities recommendations or financial product advice. Before making an investment decision, investors need to consider whether the information in this prospectus is appropriate for their needs, objectives and circumstances, and, if necessary, seek expert advice on those matters.

**New Zealand**

The shares of common stock offered hereby have not been offered or sold, and will not be offered or sold, directly or indirectly in New Zealand and no offering materials or advertisements have been or will be distributed in relation to any offer of shares in New Zealand, in each case other than:

(a) to persons whose principal business is the investment of money or who, in the course of and for the purposes of their business, habitually invest money; or

(b) to persons who in all the circumstances can properly be regarded as having been selected otherwise than as members of the public; or

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(c) to persons who are each required to pay a minimum subscription price of at least NZ$500,000 for the shares before the allotment of those shares (disregarding any amounts payable, or paid, out of money lent by the issuer or any associated person of the issuer); or

(d) in other circumstances where there is no contravention of the Securities Act 1978 of New Zealand (or any statutory modification or re-enactment of, or statutory substitution for, the Securities Act 1978 of New Zealand).

Hong Kong

The shares of common stock have not been offered or sold and will not be offered or sold in Hong Kong, by means of any document, other than

(i) to “professional investors” as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong and any rules made under that Ordinance; or

(ii) in other circumstances which do not result in the document being a “prospectus” as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that Ordinance. No advertisement, invitation or document relating to the shares of common stock has been or may be issued or has been or may be in the possession of any person for the purposes of issuance, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares of common stock which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” as defined in the Securities and Futures Ordinance and any rules made under that Ordinance.

Japan

No registration pursuant to Article 4, paragraph 1 of the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948, as amended), or the FIEL, has been made or will be made with respect to the solicitation of the application for the acquisition of the shares of common stock.

Accordingly, the shares of common stock have not been, directly or indirectly, offered or sold and will not be, directly or indirectly, offered or sold in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan) or to others for re-offering or re-sale, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan except pursuant to an exemption from the registration requirements, and otherwise in compliance with, the FIEL and the other applicable laws and regulations of Japan.

For Qualified Institutional Investors, or QII

Please note that the solicitation for newly-issued or secondary securities (each as described in Paragraph 2, Article 4 of the FIEL) in relation to the shares of common stock constitutes either a “QII only private placement” or a “QII only secondary distribution” (each as described in Paragraph 1, Article 23-13 of the FIEL). Disclosure regarding any such solicitation, as is otherwise prescribed in Paragraph 1, Article 4 of the FIEL, has not been made in relation to the shares of common stock. The shares of common stock may only be transferred to QIIs.

For Non-QII Investors

Please note that the solicitation for newly-issued or secondary securities (each as described in Paragraph 2, Article 4 of the FIEL) in relation to the shares of common stock constitutes either a “small number private placement” or a “small number private secondary distribution” (each as is described in Paragraph 4, Article 23-13 of the FIEL). Disclosure regarding any such solicitation, as is otherwise prescribed in Paragraph 1, Article 4 of the FIEL, has not been made in relation to the shares of common stock. The shares of common stock may only be transferred en bloc without subdivision to a single investor.
Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares of common stock may not be circulated or distributed, nor may the shares of common stock be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore, or the SFA, (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275, of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares of common stock are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

(a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

(b) a trust (where the trustee is not an accredited investor) the sole purpose of which is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

securities (as defined in Section 239(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the shares of common stock pursuant to an offer made under Section 275 of the SFA except:

(i) to an institutional investor or to a relevant person defined in Section 275(2) of the SFA, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA;

(ii) where no consideration is or will be given for the transfer;

(iii) where the transfer is by operation of law;

(iv) as specified in Section 276(7) of the SFA; or

(v) as specified in Regulation 32 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 of Singapore.

Solely for the purposes of its obligations pursuant to Section 309B of the SFA, we have determined, and hereby notify all relevant persons (as defined in the CMP Regulations 2018), that the shares are “prescribed capital markets products” (as defined in the CMP Regulations 2018) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products).

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LEGAL MATTERS

Wilson Sonsini Goodrich & Rosati, P.C., Palo Alto, California, which has acted as our counsel in connection with this offering, will pass upon the validity of the shares of our common stock being offered by this prospectus. The underwriters have been represented Cooley LLP, San Francisco, California.

EXPERTS

The consolidated financial statements as of December 31, 2017 and 2018, and for each of the two years in the period ended December 31, 2018, included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in accounting and auditing.

The financial statements of Retrofit Inc. as of April 15, 2018 and for the period January 1, 2018 to April 15, 2018 included in this prospectus have been audited by CJBS, LLC, an independent accounting firm, as stated in their report appearing herein, and are included in reliance upon the report of such firm, given on the authority of experts in accounting and auditing.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of our common stock offered by this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement, some of which is contained in exhibits to the registration statement as permitted by the rules and regulations of the SEC. For further information with respect to us and our common stock, we refer you to the registration statement, including the exhibits filed as a part of the registration statement. Statements contained in this prospectus concerning the contents of any contract or any other document is not necessarily complete. If a contract or document has been filed as an exhibit to the registration statement, please see the copy of the contract or document that has been filed. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit. The SEC maintains an Internet website that contains reports, proxy statements and other information about issuers that file electronically with the SEC. The address of that website is www.sec.gov.

As a result of this offering, we will become subject to the information and reporting requirements of the Exchange Act and, in accordance with this law, will file periodic reports, proxy statements and other information with the SEC. These periodic reports, proxy statements and other information will be available for inspection and copying at the SEC’s public reference facilities and the website of the SEC referred to above. We also maintain a website at www.livongo.com. Upon completion of this offering, you may access these materials free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. Information contained on our website is not a part of this prospectus and the inclusion of our website address in this prospectus is an inactive textual reference only.

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- Livongo Health, Inc. Consolidated Balance Sheets
- Livongo Health, Inc. Consolidated Statements of Operations
- Livongo Health, Inc. Consolidated Statements of Redeemable Convertible Preferred Stock and Stockholders’ Deficit
- Livongo Health, Inc. Consolidated Statements of Cash Flows
- Livongo Health, Inc. Notes to Consolidated Financial Statements

Retrofit Inc.

- Independent Auditor’s Report
- Retrofit Inc. Balance Sheet
- Retrofit Inc. Statement of Operations
- Retrofit Inc. Statement of Changes in Stockholders’ Equity
- Retrofit Inc. Statement of Cash Flows
- Retrofit Inc. Notes to Financial Statements

Unaudited Pro Forma Condensed Combined Statement of Operations

- Livongo Health, Inc. Unaudited Pro Forma Condensed Combined Statement of Operations
- Livongo Health, Inc. Notes to Unaudited Pro Forma Condensed Combined Statement of Operations

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of Livongo Health, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Livongo Health, Inc. and its subsidiaries (the “Company”) as of December 31, 2018 and 2017, and the related consolidated statements of operations, of redeemable convertible preferred stock and stockholders' deficit and of cash flows for the years then ended, including the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2018 and 2017 and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

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

We conducted our audits of these consolidated financial statements in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP
San Jose, California
May 10, 2019, except for the effects of the reverse stock split discussed in Note 1 to the consolidated financial statements, as to which the date is June 28, 2019

We have served as the Company’s auditor since 2016.

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LIVONGO HEALTH, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except per share data)

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2017</th>
<th>December 31, 2018</th>
<th>March 31, 2019 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSETS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Current assets:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$61,243</td>
<td>$108,928</td>
<td>$54,996</td>
</tr>
<tr>
<td>Accounts receivable, net of allowance for doubtful accounts as of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited), respectively</td>
<td>$7,517</td>
<td>$16,623</td>
<td>$29,779</td>
</tr>
<tr>
<td>Inventories</td>
<td>$2,915</td>
<td>$8,934</td>
<td>$8,462</td>
</tr>
<tr>
<td>Deferred costs, current</td>
<td>$2,841</td>
<td>$6,022</td>
<td>$9,341</td>
</tr>
<tr>
<td>Restricted cash, current</td>
<td>$50</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>$1,293</td>
<td>$4,935</td>
<td>$7,248</td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td>$75,859</td>
<td>$145,442</td>
<td>$109,826</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>$2,059</td>
<td>$5,837</td>
<td>$6,843</td>
</tr>
<tr>
<td>Restricted cash, noncurrent</td>
<td>$230</td>
<td>$179</td>
<td>$179</td>
</tr>
<tr>
<td>Goodwill</td>
<td>$2,486</td>
<td>$15,709</td>
<td>$35,794</td>
</tr>
<tr>
<td>Intangible assets, net</td>
<td>$166</td>
<td>$5,154</td>
<td>$18,490</td>
</tr>
<tr>
<td>Deferred costs, noncurrent</td>
<td>$1,153</td>
<td>$2,447</td>
<td>$4,749</td>
</tr>
<tr>
<td>Other noncurrent assets</td>
<td>$92</td>
<td>$5,485</td>
<td>$5,956</td>
</tr>
<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td>$82,045</td>
<td>$180,253</td>
<td>$181,837</td>
</tr>
<tr>
<td><strong>LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK, AND STOCKHOLDERS’ (DEFICIT) EQUITY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Current liabilities:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$3,253</td>
<td>$6,377</td>
<td>$9,615</td>
</tr>
<tr>
<td>Accrued expenses and other current liabilities</td>
<td>$6,094</td>
<td>$16,152</td>
<td>$22,934</td>
</tr>
<tr>
<td>Deferred acquisition related payments</td>
<td>$2,000</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Deferred revenue, current</td>
<td>$987</td>
<td>$1,614</td>
<td>$3,035</td>
</tr>
<tr>
<td>Advance payments from partner, current</td>
<td>$200</td>
<td>$293</td>
<td>$157</td>
</tr>
<tr>
<td><strong>Total current liabilities</strong></td>
<td>$12,534</td>
<td>$24,436</td>
<td>$35,741</td>
</tr>
<tr>
<td>Deferred revenue, noncurrent</td>
<td>$257</td>
<td>$437</td>
<td>$491</td>
</tr>
<tr>
<td>Advance payment from partner, noncurrent</td>
<td>$3,569</td>
<td>$6,432</td>
<td>$6,432</td>
</tr>
<tr>
<td>Other noncurrent liabilities</td>
<td>$76</td>
<td>$3,825</td>
<td>$3,170</td>
</tr>
<tr>
<td><strong>TOTAL LIABILITIES</strong></td>
<td>$16,436</td>
<td>$35,130</td>
<td>$45,834</td>
</tr>
<tr>
<td><strong>Commitments and contingencies (Note 7)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Redeemable convertible preferred stock, par value of $0.001 per share; 45,960, 58,615, and 58,615 shares authorized, issued, and outstanding as of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited), respectively; aggregate liquidation preference of $132,650, $237,650, and $237,650 as of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited), respectively; no shares issued and outstanding as of March 31, 2019, pro forma (unaudited)</td>
<td>$132,017</td>
<td>$236,929</td>
<td>$236,970</td>
</tr>
<tr>
<td><strong>Stockholders’ (deficit) equity:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common stock, par value of $0.001 per share; 84,750, 99,250, and 101,750 shares authorized as of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited), respectively; 17,030, 17,691, and 19,618 shares issued and outstanding as of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited), respectively; 78,233 shares issued and outstanding as of March 31, 2019, pro forma (unaudited)</td>
<td>$17</td>
<td>18</td>
<td>20</td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>$13,806</td>
<td>$21,789</td>
<td>$27,586</td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>$(132,650)</td>
<td>$(113,613)</td>
<td>$(128,573)</td>
</tr>
<tr>
<td><strong>TOTAL STOCKHOLDERS’ (DEFICIT) EQUITY</strong></td>
<td>$(66,408)</td>
<td>$(93,806)</td>
<td>$(100,967)</td>
</tr>
<tr>
<td><strong>TOTAL LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK, AND STOCKHOLDERS’ (DEFICIT) EQUITY</strong></td>
<td>$82,045</td>
<td>$180,253</td>
<td>$181,837</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.

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LIVONGO HEALTH, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>Revenue</td>
<td>$ 30,850</td>
<td>$ 68,431</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>8,312</td>
<td>20,269</td>
</tr>
<tr>
<td>Gross profit</td>
<td>22,538</td>
<td>48,162</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>12,028</td>
<td>24,861</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>16,502</td>
<td>36,433</td>
</tr>
<tr>
<td>General and administrative</td>
<td>11,050</td>
<td>23,063</td>
</tr>
<tr>
<td>Change in fair value of contingent consideration</td>
<td>—</td>
<td>(1,200)</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>39,580</td>
<td>83,157</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(17,028)</td>
<td>(34,995)</td>
</tr>
<tr>
<td>Other income, net</td>
<td>123</td>
<td>1,641</td>
</tr>
<tr>
<td>Loss before provision for income taxes</td>
<td>(16,919)</td>
<td>(33,354)</td>
</tr>
<tr>
<td>Provision for (benefit from) income taxes</td>
<td>(61)</td>
<td>28</td>
</tr>
<tr>
<td>Net loss</td>
<td>$(16,858)</td>
<td>$(33,382)</td>
</tr>
<tr>
<td>Accretion of redeemable convertible preferred stock</td>
<td>(143)</td>
<td>(162)</td>
</tr>
<tr>
<td>Net loss attributable to common stockholders</td>
<td>$(17,001)</td>
<td>$(33,544)</td>
</tr>
<tr>
<td>Net loss per share attributable to common stockholders, basic and diluted</td>
<td>$(1.18)</td>
<td>$(2.02)</td>
</tr>
<tr>
<td>Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted</td>
<td>14,442</td>
<td>16,573</td>
</tr>
<tr>
<td>Pro forma net loss per share attributable to common stockholders, basic and diluted (unaudited)</td>
<td>$ (0.47)</td>
<td>$ (0.19)</td>
</tr>
<tr>
<td>Weighted-average shares used in computing pro forma net loss per share attributable to common stockholders, basic and diluted (unaudited)</td>
<td>71,757</td>
<td>76,878</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
### LIVONGO HEALTH, INC.

**CONSOLIDATED STATEMENTS OF REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS’ DEFICIT**

*(in thousands)*

<table>
<thead>
<tr>
<th>Redeemable Convertible Preferred Stock</th>
<th>Common Stock</th>
<th>Additional Paid-in Capital</th>
<th>Accumulated Deficit</th>
<th>Total Stockholders’ Deficit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shares</td>
<td>Amount</td>
<td>Shares</td>
<td>Amount</td>
<td>10,452</td>
</tr>
<tr>
<td>Balance as of January 1, 2017</td>
<td>34,186</td>
<td>$ 79,528</td>
<td>14,233</td>
<td>$ 14</td>
</tr>
<tr>
<td>Issuance of Series D redeemable convertible preferred stock, net of issuance costs of $154</td>
<td>11,774</td>
<td>52,346</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Accretion of redeemable convertible preferred stock</td>
<td>—</td>
<td>143</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Exercise of common stock warrants</td>
<td>—</td>
<td>—</td>
<td>361</td>
<td>1</td>
</tr>
<tr>
<td>Issuance of common stock upon exercise of stock options</td>
<td>—</td>
<td>—</td>
<td>1,372</td>
<td>1</td>
</tr>
<tr>
<td>Issuance of restricted stock awards</td>
<td>—</td>
<td>—</td>
<td>1,064</td>
<td>1</td>
</tr>
<tr>
<td>Stock-based compensation expense</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Net loss</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Balance as of December 31, 2017</td>
<td>45,960</td>
<td>132,017</td>
<td>17,030</td>
<td>17</td>
</tr>
<tr>
<td>Issuance of Series E redeemable convertible preferred stock, net of issuance costs of $250</td>
<td>12,655</td>
<td>104,750</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Accretion of redeemable convertible preferred stock</td>
<td>—</td>
<td>162</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Issuance of common stock upon exercise of stock options, net</td>
<td>—</td>
<td>—</td>
<td>1,415</td>
<td>2</td>
</tr>
<tr>
<td>Cancellation of restricted stock awards</td>
<td>—</td>
<td>—</td>
<td>(754)</td>
<td>(1)</td>
</tr>
<tr>
<td>Stock-based compensation expense</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Net loss</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Balance as of December 31, 2018</td>
<td>58,615</td>
<td>$ 236,929</td>
<td>17,691</td>
<td>$ 18</td>
</tr>
</tbody>
</table>

*The accompanying notes are an integral part of these consolidated financial statements.*

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LIVONGO HEALTH, INC.
CONSOLIDATED STATEMENTS OF REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS’ DEFICIT
(in thousands)

<table>
<thead>
<tr>
<th>Shares</th>
<th>Amount</th>
<th>Shares</th>
<th>Amount</th>
<th>Additional Paid-in Capital</th>
<th>Accumulated Deficit</th>
<th>Total Stockholders’ Deficit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Redeemable Convertible Preferred Stock</td>
<td>Common Stock</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance as of December 31, 2017</td>
<td>45,960</td>
<td>$132,017</td>
<td>17,030</td>
<td>$17</td>
<td>$13,806</td>
<td>$ (80,231)</td>
</tr>
<tr>
<td>Accretion of redeemable convertible preferred stock (unaudited)</td>
<td>—</td>
<td>37</td>
<td>—</td>
<td>—</td>
<td>(37)</td>
<td>—</td>
</tr>
<tr>
<td>Issuance of common stock upon exercise of stock options, net (unaudited)</td>
<td>—</td>
<td>—</td>
<td>308</td>
<td>—</td>
<td>204</td>
<td>—</td>
</tr>
<tr>
<td>Stock-based compensation expense (unaudited)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>751</td>
<td>—</td>
</tr>
<tr>
<td>Balance as of March 31, 2018 (unaudited)</td>
<td>45,960</td>
<td>$132,054</td>
<td>17,338</td>
<td>$17</td>
<td>$14,724</td>
<td>$ (84,446)</td>
</tr>
<tr>
<td>Balance as of December 31, 2018</td>
<td>58,615</td>
<td>$236,929</td>
<td>17,691</td>
<td>$18</td>
<td>$21,789</td>
<td>$ (133,613)</td>
</tr>
<tr>
<td>Accretion of redeemable convertible preferred stock (unaudited)</td>
<td>—</td>
<td>41</td>
<td>—</td>
<td>—</td>
<td>(41)</td>
<td>—</td>
</tr>
<tr>
<td>Issuance of common stock upon exercise of stock options (unaudited)</td>
<td>—</td>
<td>—</td>
<td>454</td>
<td>—</td>
<td>314</td>
<td>—</td>
</tr>
<tr>
<td>Issuance of restricted stock awards (unaudited)</td>
<td>—</td>
<td>—</td>
<td>982</td>
<td>1</td>
<td>(1)</td>
<td>—</td>
</tr>
<tr>
<td>Issuance of common stock upon vesting of restricted stock units (unaudited)</td>
<td>—</td>
<td>—</td>
<td>491</td>
<td>1</td>
<td>(1)</td>
<td>—</td>
</tr>
<tr>
<td>Stock-based compensation expense (unaudited)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>5,526</td>
<td>—</td>
</tr>
<tr>
<td>Net loss (unaudited)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(14,960)</td>
</tr>
<tr>
<td>Balance as of March 31, 2019 (unaudited)</td>
<td>58,615</td>
<td>$236,970</td>
<td>19,618</td>
<td>$20</td>
<td>$27,586</td>
<td>$ (128,573)</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
LIVONGO HEALTH, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

<table>
<thead>
<tr>
<th>Year Ended</th>
<th>Three Months Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 31</td>
<td>March 31 (unaudited)</td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2017</th>
<th>2018</th>
<th>2018 (unaligned)</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net loss</td>
<td>($16,858)</td>
<td>$33,312</td>
<td>$(4,215)</td>
<td>$(14,960)</td>
</tr>
<tr>
<td>Adjustments to reconcile net loss to net cash used in operating activities:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization expense</td>
<td>364</td>
<td>1,263</td>
<td>193</td>
<td>696</td>
</tr>
<tr>
<td>Amortization of intangible assets</td>
<td>12</td>
<td>592</td>
<td>9</td>
<td>564</td>
</tr>
<tr>
<td>Loss on disposal of property and equipment</td>
<td>7</td>
<td>3</td>
<td></td>
<td>—</td>
</tr>
<tr>
<td>Change in fair value of contingent consideration</td>
<td>—</td>
<td>(1,200)</td>
<td>—</td>
<td>674</td>
</tr>
<tr>
<td>Allowance for doubtful accounts</td>
<td>(41)</td>
<td>476</td>
<td>17</td>
<td>98</td>
</tr>
<tr>
<td>Stock-based compensation expense</td>
<td>2,118</td>
<td>6,332</td>
<td>739</td>
<td>5,510</td>
</tr>
<tr>
<td>Deferred income taxes</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(1,396)</td>
</tr>
<tr>
<td>Changes in operating assets and liabilities, net of impact of acquisitions:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>(5,391)</td>
<td>(9,174)</td>
<td>(2,029)</td>
<td>(11,916)</td>
</tr>
<tr>
<td>Inventories</td>
<td>(1,465)</td>
<td>(5,963)</td>
<td>814</td>
<td>472</td>
</tr>
<tr>
<td>Deferred costs</td>
<td>(3,994)</td>
<td>(4,475)</td>
<td>(1,304)</td>
<td>(5,621)</td>
</tr>
<tr>
<td>Prepaid expenses and other assets</td>
<td>(617)</td>
<td>(1,911)</td>
<td>(136)</td>
<td>(2,609)</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>2,488</td>
<td>2,562</td>
<td>(373)</td>
<td>3,142</td>
</tr>
<tr>
<td>Accrued expenses and other liabilities</td>
<td>2,650</td>
<td>8,286</td>
<td>(1,503)</td>
<td>220</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>1,042</td>
<td>595</td>
<td>(107)</td>
<td>75</td>
</tr>
<tr>
<td>Advance payments from partner</td>
<td>3,769</td>
<td>2,936</td>
<td>(49)</td>
<td>(136)</td>
</tr>
<tr>
<td><strong>Net cash used in operating activities</strong></td>
<td>(15,916)</td>
<td>(33,040)</td>
<td>(7,944)</td>
<td>(25,187)</td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM INVESTING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2017</th>
<th>2018</th>
<th>2018 (unaligned)</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchases of property and equipment</td>
<td>(416)</td>
<td>(954)</td>
<td>(144)</td>
<td>(340)</td>
</tr>
<tr>
<td>Capitalized internal-use software costs</td>
<td>(1,461)</td>
<td>(3,562)</td>
<td>(606)</td>
<td>(1,284)</td>
</tr>
<tr>
<td>Acquisitions, net of cash acquired</td>
<td>(598)</td>
<td>(12,268)</td>
<td>—</td>
<td>(27,435)</td>
</tr>
<tr>
<td>Escrow deposit</td>
<td>—</td>
<td>(7,000)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Net cash used in investing activities</strong></td>
<td>(2,475)</td>
<td>(23,784)</td>
<td>(750)</td>
<td>(29,059)</td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM FINANCING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2017</th>
<th>2018</th>
<th>2018 (unaligned)</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred acquisition related payment</td>
<td>—</td>
<td>(2,000)</td>
<td>(1,000)</td>
<td>—</td>
</tr>
<tr>
<td>Proceeds from issuance of redeemable convertible preferred stock, net of issuance costs</td>
<td>52,346</td>
<td>104,750</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Proceeds from exercise of stock options, net of repurchases</td>
<td>1,069</td>
<td>1,658</td>
<td>204</td>
<td>314</td>
</tr>
<tr>
<td>Proceeds from exercise of common stock warrants</td>
<td>286</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Repayments on long-term debt</td>
<td>(4,306)</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Net cash provided by (used in) financing activities</strong></td>
<td>49,395</td>
<td>104,408</td>
<td>(796)</td>
<td>314</td>
</tr>
<tr>
<td>Net increase (decrease) in cash, cash equivalents, and restricted cash</td>
<td>31,004</td>
<td>47,584</td>
<td>(9,490)</td>
<td>(53,932)</td>
</tr>
<tr>
<td>Cash, cash equivalents, and restricted cash, beginning of period</td>
<td>30,519</td>
<td>61,523</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Cash, cash equivalents, and restricted cash, end of period</td>
<td>$61,523</td>
<td>$109,107</td>
<td>$52,033</td>
<td>$55,175</td>
</tr>
</tbody>
</table>

### Reconciliation of cash, cash equivalents, and restricted cash:

<table>
<thead>
<tr>
<th>Description</th>
<th>2018 (unaligned)</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$51,753</td>
<td>$54,996</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>$179</td>
<td>$179</td>
</tr>
<tr>
<td><strong>Total cash, cash equivalents, and restricted cash, end of period</strong></td>
<td>$52,033</td>
<td>$55,175</td>
</tr>
</tbody>
</table>

### Supplemental disclosures of cash flow information

<table>
<thead>
<tr>
<th>Description</th>
<th>2018 (unaligned)</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash paid for interest</td>
<td>$66</td>
<td>—</td>
</tr>
<tr>
<td><strong>Supplemental disclosures of noncash investing and financing activities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accretion of redeemable convertible preferred stock</td>
<td>$143</td>
<td>$162</td>
</tr>
<tr>
<td>Purchases of property and equipment included in accounts payable and accrued liabilities</td>
<td>$37</td>
<td>$20</td>
</tr>
<tr>
<td>Contingent consideration liability related to Retrofit acquisition</td>
<td>$—</td>
<td>$6,204</td>
</tr>
<tr>
<td>Unpaid working capital adjustment related to myStrength acquisition</td>
<td>$—</td>
<td>—</td>
</tr>
<tr>
<td>Capitalized internal-use software costs in accounts payable and accrued liabilities</td>
<td>$149</td>
<td>$299</td>
</tr>
<tr>
<td>Unpaid deferred offering costs</td>
<td>$—</td>
<td>—</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.

F-7
1. Organization and Description of Business

Description of Business

Livongo Health, Inc. (“we”, “us”, “the Company”, or “Livongo”) was incorporated in the state of Delaware on October 16, 2008, under the name of EosHealth, Inc. In September 2014, we changed our name to Livongo Health, Inc. Livongo empowers people with chronic conditions to live better and healthier lives. We have created a unified platform that provides smart, cellular-connected devices, supplies, informed coaching, data science-enabled insights and facilitates access to medications across multiple chronic conditions to help our members lead better lives. We currently offer Livongo for Diabetes, Livongo for Hypertension, Livongo for Prediabetes and Weight Management, and Livongo for Behavioral Health by myStrength. We create consumer-first experiences with high member satisfaction, measurable, sustainable health outcomes, and more cost-effective care for our members and our clients. This approach is leading to better clinical and financial outcomes while also creating a better experience for people with chronic conditions and their care team of family, friends, and medical professionals. Our headquarters is located in Mountain View, California, and we serve customers throughout North America.

Liquidity and Capital Resources

We have incurred losses since inception. As of March 31, 2019 (unaudited), we had an accumulated deficit of $128.6 million. We incurred a net loss of $33.4 million and used $33.0 million of cash in operating activities during the year ended December 31, 2018. We incurred a net loss of $15.0 million and used $25.2 million in operating activities during the three months ended March 31, 2019 (unaudited).

Historically, we have primarily funded our operations through equity financings. Our primary source of liquidity has been proceeds from sales of our redeemable convertible preferred stock. Since January 1, 2017, we have raised net proceeds of $157.1 million from our Series D and Series E redeemable convertible preferred stock. The continued execution of our long-term business plan may require us to explore financing options such as issuance of equity or debt instruments. While we have historically been successful in obtaining equity financing, there can be no assurance that such additional financing, if necessary, will be available or, if available, that such financings can be obtained on satisfactory terms.

Reverse Stock Split

In June 2019, our board of directors and stockholders approved a 1-for-2 reverse stock split of our common stock and redeemable convertible preferred stock, which was effected on June 27, 2019 pursuant to an amendment to our amended and restated certificate of incorporation. The par value of the common stock and redeemable convertible preferred stock was not adjusted as a result of the reverse stock split. All references to redeemable convertible preferred stock, common stock, options to purchase common stock, restricted stock awards, restricted stock units, common stock warrants, per share data, and related information included in the accompanying consolidated financial statements have been adjusted to reflect this reverse stock split for all periods presented.

2. Summary of Significant Accounting Policies

Basis of Presentation

The consolidated financial statements and accompanying notes have been prepared in accordance with U.S. generally accepted accounting principles (“U.S. GAAP”) and include the accounts of Livongo Health, Inc. and our wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated.
Foreign Currency

Our reporting currency is the U.S. dollar. We determine the functional currency of each subsidiary based on the currency of the primary economic environment in which each subsidiary operates. Items included in the financial statements of such subsidiaries are measured using that functional currency.

The functional currency of each of our subsidiaries is the U.S. dollar. Foreign currency denominated monetary assets and liabilities are remeasured into U.S. dollars at current exchange rates and foreign currency denominated nonmonetary assets and liabilities are remeasured into U.S. dollars at historical exchange rates. Gains or losses from foreign currency remeasurement and settlements are included in other income (expense), net in the consolidated statements of operations. During the years ended December 31, 2017 and 2018 and the three months ended March 31, 2018 and 2019 (unaudited), our gains or losses from foreign currency remeasurement and settlements were not material.

Comprehensive Loss

For the years ended December 31, 2017 and 2018 and the three months ended March 31, 2018 and 2019 (unaudited), there was no difference between comprehensive loss and net loss.

Unaudited Interim Consolidated Financial Information

The accompanying interim consolidated balance sheet as of March 31, 2019, the consolidated statements of operations, of cash flows, and of redeemable convertible preferred stock and stockholders’ deficit for the three months ended March 31, 2018 and 2019 are unaudited. These interim consolidated financial statements have been prepared on a basis consistent with the annual consolidated financial statements and, in the opinion of management, include all adjustments necessary to fairly state our financial position as of March 31, 2019 and the results of our operations and cash flows for the three months ended March 31, 2018 and 2019. The financial data and other financial information disclosure in the notes to these consolidated financial statements related to the three month periods are also unaudited. The results for the three months ended March 31, 2019 are not necessarily indicative of the operating results expected for the year ending December 31, 2019 or any future period.

Reclassifications

Certain prior period amounts have been reclassified in order to conform to the current period presentation. These reclassifications had no effect on the previously reported net loss.

Unaudited Pro Forma Balance Sheet

The unaudited pro forma balance sheet information as of March 31, 2019 has been prepared assuming the automatic conversion of the redeemable convertible preferred stock into 58,615,488 shares of common stock on March 31, 2019. All outstanding shares of redeemable convertible preference stock will automatically convert into our common stock immediately prior to the closing of a qualifying initial public offering ("IPO"), as defined in our certificate of incorporation. See Note 8 for further information.

During the year ended December 31, 2018 and the three months ended March 31, 2019, we granted certain employees performance-based restricted stock units ("Performance RSUs"). These Performance RSUs include a service-based vesting condition and a performance-based vesting condition. Vesting of Performance RSUs is subject to continuous service and the satisfaction of qualified liquidity events, including a change in control or six months and one day following our planned IPO. The satisfaction of the performance-based vesting condition is expected to become probable upon the completion of our planned IPO, at which point we will record cumulative stock-based compensation expense using the accelerated attribution method. The unaudited pro forma
balance sheet information as of March 31, 2019 gives effect to stock-based compensation expense of $3.4 million associated with the Performance RSUs for which the service-based vesting condition was satisfied or partially satisfied at March 31, 2019, and the performance-based vesting condition will be satisfied in connection with the planned IPO. This pro forma adjustment is reflected as an increase to additional paid-in capital and accumulated deficit. No Performance RSUs have been included in the unaudited pro forma balance sheet disclosure of shares outstanding as the settlement of these shares will take place subsequent to the planned IPO. Performance RSU holders will generally incur taxable income based upon the fair value of the shares on the date they settle. We are required to withhold taxes on such value at applicable minimum statutory rates. We are unable to quantify these obligations as of March 31, 2019 and will remain unable to quantify them until the settlement of the Performance RSUs, as the withholding obligations will be based on the fair value of the shares on the settlement date. Accordingly, payroll tax expenses and other withholding obligations have not been included in the pro forma amounts.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make certain estimates, judgments, and assumptions that affect the reported amounts of assets and liabilities and the related disclosures at the date of the financial statements, as well as the reported amounts of revenue and expenses during the periods presented. Such estimates, judgments, and assumptions include: revenue recognition, assessment of the useful life and recoverability of long-lived assets, fair values of stock-based awards, contingent consideration in business combinations, and income taxes. To the extent there are material differences between these estimates, judgments, or assumptions and actual results, our financial statements will be affected.

Business Combinations

We have completed a number of acquisitions of other businesses in the past and may acquire additional businesses or technologies in the future. The results of businesses acquired in a business combination are included in our consolidated financial statements from the date of acquisition. We allocate the purchase price, which is the sum of the consideration provided in a business combination to the identifiable assets and liabilities of the acquired business at their acquisition date fair values. The excess of the purchase price over the amount allocated to the identifiable assets and liabilities is recorded as goodwill. Determining the fair value of assets acquired and liabilities assumed requires management to use significant judgment and estimates, including the selection of valuation methodologies, estimates of future revenue and cash flows, discount rates and selection of comparable companies.

When we issue stock-based or cash awards to an acquired company’s stockholders, we evaluate whether the awards are consideration or compensation for post-acquisition services. The evaluation includes, among other things, whether the vesting of the awards is contingent on the continued employment of the acquired company’s stockholders beyond the acquisition date. If continued employment is required for vesting, the awards are treated as compensation for post-acquisition services and recognized as expense over the requisite service period.

To date, the assets acquired, and liabilities assumed in our business combinations have primarily consisted of goodwill and finite-lived intangible assets, consisting primarily of developed technologies, customer relationships and trade names. The estimated fair values and useful lives of identifiable intangible assets are based on many factors, including estimates and assumptions of future operating performance and cash flows of the acquired business, the nature of the business acquired, and the specific characteristics of the identified intangible assets. The estimates and assumptions used to determine the fair values and useful lives of identified intangible assets could change due to numerous factors, including market conditions, technological developments, economic conditions and competition.

Acquisition-related transaction costs incurred by us are not included as a component of consideration transferred but are accounted for as operating expenses in the period in which the costs are incurred in the consolidated statements of operations.
Concentration of Risk

Financial instruments that potentially subject us to credit risk consist principally of cash, cash equivalents, and accounts receivable. We maintain our cash primarily with domestic financial institutions of high credit quality, which may exceed federal deposit insurance corporation limits. We invest our cash equivalents in highly rated money market funds. We have not experienced any losses in such accounts. We believe we are not exposed to any significant credit risk on cash and cash equivalents and perform periodic evaluations of the credit standing of such institutions.

Our sales are predominately to self-insured employers, healthcare providers, and insurance carriers located throughout North America. Accounts receivable are recorded at the invoiced amount, and are stated at realizable value, net of an allowance for doubtful accounts. We perform ongoing assessments and credit evaluations of our clients to assess the collectability of the accounts based on a number of factors, including past transaction experience, age of the accounts receivable, review of the invoicing terms of the contracts, and recent communication with clients. We have not experienced significant credit losses from our accounts receivable.

Significant customers and partners are those which represent 10% or more of our net accounts receivable balance or revenue during the period at each respective consolidated balance sheet date. There were no customers that represented 10% or more of our accounts receivable balance or revenue for the periods presented. For each significant partner, revenue as a percentage of total revenue and accounts receivable as a percentage of net accounts receivable were as follows:

<table>
<thead>
<tr>
<th></th>
<th>Revenue</th>
<th>Accounts Receivable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Year Ended December 31</td>
<td>Three Months Ended March 31</td>
</tr>
<tr>
<td>Partner A</td>
<td>30%</td>
<td>33%</td>
</tr>
<tr>
<td>Partner B</td>
<td>*</td>
<td>*</td>
</tr>
</tbody>
</table>

* Less than 10% of total revenue or net accounts receivable

We utilize a limited number of manufacturing vendors to build and assemble our products. The hardware components included in our devices are sourced from various suppliers by the manufacturer and are principally industry standard parts and components that are available from multiple vendors. Quality or performance failures of the glucometer or changes in the contractors’ or vendors’ financial or business condition could disrupt our ability to supply quality products to our customers and thereby have a material adverse impact on our business, financial condition and results of operations.

Fair Value Measurements

The carrying value of our financial instruments, including cash equivalents, accounts receivable, accounts payable, and accrued liabilities approximates fair value due to their short-term nature.

We measure financial assets and liabilities at fair value at each reporting period using a fair value hierarchy that requires the use of observable inputs and minimizes the use of unobservable inputs. We define fair value as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

- Level 1—Quoted prices in active markets for identical assets or liabilities.
- Level 2—Observable inputs other than quoted prices in active markets for identical assets and liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
Revenue Recognition

The substantial majority of our revenue is derived from monthly subscription fees that are recognized as services are rendered and earned under the subscription agreements with clients. Clients are business entities that have contracted with us to offer the Livongo solution to their employees. Client’s employees or their covered dependents enrolled in the Livongo program are referred to as members. Clients are our customers. We improve member health results and reduce healthcare costs by providing an overall health management solution through the integration of Livongo devices, supplies, access to our web-based platform, and clinical and data services. Clients primarily pay monthly subscription fees based on a per participant per month model, based on the number of active enrolled members each month. In addition, clients can choose to pay an upfront amount with a lower per participant per month fee. In certain agreements associated with our Livongo for Behavioral Health by myStrength solution, clients either pay a fixed upfront fee or a monthly fee based on the number of members to whom the solution is available. The contract term is generally one to three years, with one year auto-renewal terms. There is usually a six-month minimum enrollment period for members. Many of our customers can stop their monthly recurring subscription but will be required to pay an early termination fee if the termination occurs during the minimum enrollment period.

We sell to our clients through our direct sales force and through our partners (channel partners, pharmacy benefit managers, and resellers). We are the principal with respect to contracts originated through partners, as we are the primary obligor responsible for providing the solutions that are the subject of the arrangement with the client, we have latitude in establishing pricing, and we have inventory risk. In these situations, revenue is recognized on a gross basis, and fees paid to partners are recorded as commissions expense included in sales and marketing expenses in the consolidated statements of operations.

We have determined that our blood glucose meter does not have standalone value because the device is not sold separately and does not function without the associated supplies and services. Our blood glucose meter along with the associated supplies and services are treated as a single unit of account and revenue is recognized on a monthly basis when all of the following criteria are satisfied: (i) there is persuasive evidence that an arrangement exists, (ii) delivery of the device has occurred and services are being rendered, (iii) the price is fixed or determinable and (iv) collectability is reasonably assured. When the arrangement includes an upfront fee, the upfront fee is deferred and amortized into revenue over the expected member enrollment period, which is estimated to be 24 months and such amount has not been material for all periods presented.

We also derive revenue from the sale of certain of our connected devices when we have determined they have standalone value, such as the cellular-connected weight scale in our Livongo for Prediabetes and Weight Management solution. When an agreement contains multiple units of account, we allocate revenue to each unit of account based on a selling price hierarchy as required. The selling price for a unit of account is based on its Vendor Specific Objective Evidence (“VSOE”) or, if available, third-party evidence (“TPE”) if VSOE is not available, or best estimate of selling price (“ESP”) if neither VSOE nor TPE is available. The ESP is established considering several internal factors including, but not limited to, historical sales, pricing practices and geographies in which we offer our products and solutions. The determination of ESP is judgmental. Amounts allocated to the device unit of account are recognized upon delivery of the device. Amounts allocated to the service unit of account are recognized ratably over time, but not to exceed any amounts that are subject to contingent revenue limitations.

Certain of our contractual agreements with customers contain a most-favored nation clause, pursuant to which we represent that the price charged and the terms offered to the customer will be no less favorable than those made available to other customers. We have not incurred any obligations related to such terms in these agreements during the periods presented.
Certain of our client contracts are subject to pricing adjustments based on various performance metrics, such as member satisfaction scores, cost savings guarantees and health outcome guarantees, which if not met typically require us to refund a portion of the per participant per month fee paid. We defer the maximum amount of consideration that is contingently refundable to our clients until the performance metric is met.

**Deferred Revenue and Deferred Costs**

Deferred revenue consists of billed, but unrecognized revenue, comprised of fees received in advance of the delivery or completion of the services and amounts received in instances when revenue recognition criteria have not been met. Deferred revenue associated with upfront payments for the device is amortized ratably over expected member enrollment period. Deferred revenue that will be recognized during the succeeding twelve-month period is recorded as current deferred revenue and the remaining portion is recorded as noncurrent deferred revenue. Deferred costs consist of cost of inventory incurred in connection with delivery of services that are deferred and amortized over the shorter of the expected member enrollment period or the expected device life.

**Cost of Revenue**

Cost of revenue consists of expenses that are closely correlated or directly related to delivery of our solutions and monthly subscription fees, including product costs, data center costs, client support costs, credit card processing fees, allocated overhead costs, and amortization of developed technology and deferred costs. Certain personnel expenses associated with supporting these functions, including allocated overhead expenses for facilities, IT and depreciation expense, are included in cost of revenue.

**Cash, Cash Equivalents, and Restricted Cash**

Cash and cash equivalents consist of cash in banks and highly liquid investments, including money market fund accounts, purchased with an original maturity of three months or less. Cash equivalents consist of investments in money market funds for which the carrying amount approximates fair value, due to the short maturities of these instruments.

Our restricted cash consists of deposits required under our vendor agreement, credit card program and the terms of the lease agreement for our office space in Mountain View, California. Total restricted cash was $0.3 million, $0.2 million, and $0.2 million, as of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited), respectively.

**Accounts Receivable and Allowance for Doubtful Accounts**

Accounts receivable primarily consists of amounts billed to customers. Our accounts receivable are subject to collection risk. Gross accounts receivable are reduced for this risk by an allowance for doubtful accounts. We determine the need for an allowance for doubtful accounts by performing ongoing assessments and credit evaluations of our clients to assess the probability of collection based upon various factors, including past transaction experience, age of the accounts receivable, review of the invoicing terms of the contract, and recent communication with clients. Accounts receivables are written off against the allowance when management determines a balance is uncollectible and we no longer actively pursue collection of the receivable.

We do not typically offer right of refund in our contracts. We have not experienced significant credit losses from our accounts receivable. As of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited), the allowance for doubtful accounts was $0.1 million, $0.6 million, and $0.7 million, respectively.
The changes in the allowance for doubtful accounts are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31, 2017</th>
<th>Year Ended December 31, 2018</th>
<th>Year Ended December 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allowance for doubtful accounts—beginning balance</td>
<td>$ (92)</td>
<td>$ (51)</td>
<td>$ (575)</td>
</tr>
<tr>
<td>Provision for doubtful accounts</td>
<td>(58)</td>
<td>(494)</td>
<td>(98)</td>
</tr>
<tr>
<td>Amounts written off and other adjustments</td>
<td>99</td>
<td>(30)</td>
<td>(18)</td>
</tr>
<tr>
<td>Allowance for doubtful accounts—ending balance</td>
<td>$ (51)</td>
<td>$ (575)</td>
<td>$ (691)</td>
</tr>
</tbody>
</table>

**Goodwill**

Goodwill represents the excess of the purchase price over the fair value of net assets acquired in business combinations. We review goodwill for impairment at least annually or more frequently if events or changes in circumstances indicate that the carrying value of goodwill may not be recoverable. On January 1, 2017, we adopted ASU No. 2017-04, Intangibles- Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment, which eliminated Step 2 from the testing of goodwill impairment. Goodwill is tested for impairment at the reporting unit level by first assessing the qualitative factors to determine whether it is more likely than not that the fair value of our single reporting unit is less than its carrying amount. Qualitative indicators assessed include consideration of macroeconomic, industry and market conditions, our overall financial performance and personnel or strategy changes. Based on the qualitative assessment, if it is determined that it is more likely than not that its fair value is less than its carrying amount, the fair value of our single reporting unit is compared to its carrying value. Any excess of the goodwill carrying amount over the fair value is recognized as an impairment loss, and the carrying value of goodwill is written down to fair value. As of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited), no goodwill impairment has been identified.

**Intangible Assets, Net**

Acquired finite-lived intangible assets are amortized over their estimated useful lives. We evaluate the recoverability of our intangible assets for possible impairment whenever events or circumstances indicate that the carrying amount of such assets may not be recoverable. Recoverability of these assets is measured by a comparison of the carrying amounts to the future undiscounted cash flows the assets are expected to generate. If such review indicates that the carrying amount of intangible assets is not recoverable, the carrying amount of such assets is reduced to fair value. We have not recorded any such impairment charges.

<table>
<thead>
<tr>
<th></th>
<th>Usefulness Life (in years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer relationships</td>
<td>7–10</td>
</tr>
<tr>
<td>Developed technology</td>
<td>5–7</td>
</tr>
<tr>
<td>Trade names</td>
<td>2–5</td>
</tr>
</tbody>
</table>

**Inventories**

Inventories consist of purchased components for assembling our welcome kits, refill kits, and replacement components. Our inventories are stated at the lower of cost or net realizable value. The cost of inventories is determined using the weighted-average cost method, which approximates the actual cost on a FIFO (first-in, first-out) basis. All inventories are expected to be delivered to our members within a normal operating cycle for us and all of our kits and replacement components are classified as current assets. We measure our inventories at the lower of cost or net realizable value. We have determined that all of our inventories would be sold at cost, and that no reserve for lower of cost or net realizable value is required for our inventories as of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited).
Property and Equipment, Net

Property and equipment, net, are stated at cost, less accumulated depreciation. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets, which are generally three years. Leasehold improvements are amortized on a straight-line basis over the shorter of the remaining lease term or the estimated useful lives of related improvements. Expenditures for repairs and maintenance are expensed in the period incurred.

Useful lives for property and equipment are as follows:

<table>
<thead>
<tr>
<th>Property and Equipment</th>
<th>Estimated Useful Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Furniture and fixtures</td>
<td>3 years</td>
</tr>
<tr>
<td>Computers equipment and software</td>
<td>3 years</td>
</tr>
<tr>
<td>Capitalized internal-use software</td>
<td>3 years</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>Lesser of estimated useful life or remaining lease term</td>
</tr>
</tbody>
</table>

Capitalized Internal-Use Software Costs

Software development costs for software to be sold, leased, or otherwise marketed are expensed as incurred until the establishment of technological feasibility, at which time those costs are capitalized until the product is available for general release to customers and amortized over the estimated life of the product. Technological feasibility is established upon the completion of a working prototype that has been certified as having no critical bugs and is a release candidate. To date, costs to develop software that is marketed externally have not been capitalized as the current software development process is essentially completed concurrently with the establishment of technological feasibility. As such, all related software development costs are expensed as incurred and included in research and development expense in the consolidated statements of operations.

Costs related to software acquired, developed, or modified solely to meet our internal requirements, with no substantive plans to market such software at the time of development, and costs related to development of web-based products are capitalized. Costs incurred during the preliminary planning and evaluation stage of the project and during the post-implementation operational stage are expensed as incurred. Costs incurred during the application development stage of the project are capitalized. Capitalized internal-use software costs are amortized on a straight-line basis over their estimated useful lives. We capitalized $1.6 million, $4.0 million, $0.6 million, and $1.1 million for software acquired, developed and modified to meet our internal requirements during the years ended December 31, 2017 and 2018 and the three months ended March 31, 2018 and 2019 (unaudited), respectively. Amortization expense related to capitalized internal-use software during the years ended December 31, 2017 and 2018 and the three months ended March 31, 2018 and 2019 (unaudited) was $0.2 million, $0.9 million, $0.1 million, and $0.5 million, respectively.

Impairment of Long-Lived Assets

We review long-lived assets for impairment when circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of these assets is measured by a comparison of the carrying amounts to the sum of the future undiscounted cash flows the assets are expected to generate over the remaining useful lives of the assets. If a long-lived asset fails a recoverability test, we measure the amount by which the carrying value of the asset exceeds its fair value. There were no events or changes in business circumstances during the years ended December 31, 2017, December 31, 2018, and the three months ended March 31, 2019 (unaudited) that indicated the carrying amounts of any long-lived assets were not fully recoverable.

Advance Payments from Partner

Advance payments from partner represents amounts received from a channel partner in connection with a Value-Added Reseller Agreement (“Reseller Agreement”) dated as of May 4, 2017. The Reseller Agreement

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specifies for payments to us if certain user enrollment targets are not met by specified dates stated in the initial term of the Reseller Agreement. Such payments are used as credits against our reseller fee payments to the channel partner. As of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited), advance payments from the channel partner were $3.8 million, $6.7 million, and $6.6 million, respectively.

Advertising Expense

We recognize advertising expenses as they are incurred, and such costs are included in sales and marketing expense in the consolidated statements of operations. During the years ended December 31, 2017 and 2018 and three months ended March 31, 2018 and 2019 (unaudited), advertising expense totaled $3.0 million, $5.0 million, $0.8 million, and $2.9 million respectively.

Deferred Offering Costs

Deferred offering costs are capitalized and consist of fees and expenses incurred in connection with the anticipated sale of our common stock in an initial public offering (“IPO”), including the legal, accounting, printing and other IPO-related costs. Upon completion of the IPO, these deferred offering costs will be reclassified to stockholders’ equity and recorded against the proceeds from the offering. Capitalized deferred offering costs as of March 31, 2019 (unaudited) were $0.3 million, which were included in other noncurrent assets on our consolidated balance sheet. Should the IPO be abandoned, the deferred offering costs will be expensed immediately as a charge to operating expenses in the consolidated statements of operations.

Stock-Based Compensation Expense

We recognize stock-based compensation expense on a straight-line basis over the requisite service period, which is generally consistent with the vesting of the awards, based on the estimated fair value of all stock-based payments issued to employees and directors. We estimate the fair value of each employee stock option on the date of grant using the Black-Scholes option-pricing model. The determination of the fair value of each stock award using this option-pricing model is affected by our assumptions regarding a number of complex and subjective variables. These variables include, but are not limited to, the fair value of the common stock at the date of grant, the expected term of the awards, the expected stock price volatility over the term of the awards, risk-free interest rate, and dividend yield as follows:

Fair Value of Common Stock—Given the absence of a public trading market, our board of directors considered numerous objective and subjective factors to determine the fair value of our common stock at each grant date. These factors included, but were not limited to (i) contemporaneous third-party valuations of common stock; (ii) the prices for our redeemable convertible preferred stock sold to outside investors; (iii) the rights and preferences of redeemable convertible preferred stock relative to common stock; (iv) the lack of marketability of our common stock; (v) developments in the business; and (vi) the likelihood of achieving a liquidity event, such as an initial public offering or sale of the business, given prevailing market conditions.

Expected Term—The expected term represents the period that the stock-based awards are expected to be outstanding. We determine the expected term using the simplified method. The simplified method deems the term to be the average of the time-to-vesting and the contractual life of the options. For stock options granted to non-employees, the expected term equals the remaining contractual term of the option from the vesting date.

Expected Volatility—As we have no trading history for our common stock, the expected volatility was estimated by taking the average historic price volatility for industry peers, consisting of several public companies in our industry that are either similar in size, stage, or financial leverage, over a period equivalent to the expected term of the awards.
Risk-Free Interest Rate—The risk-free interest rate is calculated using the average of the published interest rates of U.S. Treasury zero-coupon issues with maturities that are commensurate with the expected term.

Dividend Yield—The dividend yield assumption is zero, as we have no history of, or plans to make, dividend payments.

Stock-based compensation expense for equity instruments issued to non-employees is based on their fair values of the awards determined using the Black-Scholes option-pricing model as the awards vest. The fair value of options granted to non-employees is recognized over the vesting period on a straight-line basis. For stock options issued to non-employees with specific performance criteria, we make a determination at each balance sheet date whether the performance criteria are probable of being achieved. Compensation expense is recognized as the performance criteria are met or when it is probable that the criteria will be met.

During the year ended December 31, 2018 and the three months ended March 31, 2019 (unaudited), we granted options with a combination of service-based vesting conditions and market-based vesting conditions. The estimated fair value of these options was determined on the date of grant using the Monte Carlo simulation model, which utilizes multiple input variables to simulate a range of our possible future enterprise value. The determination of the estimated grant date fair value of these options is affected by a number of assumptions including our estimated common stock fair value on the grant date, expected volatilities of our common stock, our risk-free interest rate, and expected dividend yield. We recognize stock-based compensation expense for these options on a graded basis over the longer of the explicit service period or the derived service period.

We account for forfeitures when they occur. For awards forfeited before completion of the requisite service period, previously recognized compensation cost is reversed in the period the award is forfeited. For stock-based awards that are modified, a modification of the terms of a stock-based award is treated as an exchange of the original award or a new award with total compensation cost equal to the grant-date fair value of the original award plus any incremental value of the modification to the award.

Common Stock Warrants

Common stock warrants are measured at their estimated fair value upon issuance using the Black-Scholes pricing model and recorded in additional paid-in capital. Common stock warrants are equity classified and no subsequent remeasurement is required.

Income Taxes

We account for income taxes using the asset and liability method under which deferred tax assets and liabilities are determined based on the differences between the financial reporting and tax bases of assets and liabilities with consideration given to net operating losses and tax credit carryforwards. Deferred tax assets and liabilities are measured using the enacted tax rates that are expected to be in effect when the differences are expected to reverse.

We assess the likelihood that deferred tax assets will be recovered from future taxable income and a valuation allowance is established when necessary to reduce deferred tax assets to the amounts more likely than not expected to be realized. We adopted Accounting Standards Update (“ASU”) No. 2015-17, Income Taxes—Balance Sheet Classification of Deferred Taxes, and classified our deferred income taxes as noncurrent on the consolidated balance sheets.

We recognize and measure uncertain tax positions using a two-step approach. The first step is to evaluate the tax position taken or expected to be taken by determining if the weight of available evidence indicates that it is more likely than not that the tax position will be sustained in an audit, after resolution of any related appeals or
litigation processes. The second step is to measure the tax benefit as the largest amount that is more than 50% likely to be realized upon ultimate settlement. Significant judgment is required to evaluate uncertain tax positions. We evaluate our uncertain tax positions on a regular basis. Our evaluations are based on a number of factors, including changes in facts and circumstances, changes in tax law, correspondence with tax authorities during the course of the audit, and effective settlement of audit issues.

**Net Loss Per Share Attributable to Common Stockholders**

Basic and diluted net loss per share attributable to common stockholders is presented in conformity with the two-class method required for participating securities. We consider all series of redeemable convertible preferred stock to be participating securities as the holders of such stock are entitled to receive non-cumulative dividends on an as-converted basis in the event that a dividend is paid on common stock. Under the two-class method, the net loss attributable to common stockholders is not allocated to the redeemable convertible preferred stock as the holders of our redeemable convertible preferred stock do not have a contractual obligation to share in our losses. Under the two-class method, net income is attributed to common stockholders and participating securities based on their participation rights.

Basic net loss per share attributable to common stockholders is computed by dividing the net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding during the period. Net loss attributable to common stockholders is calculated by adjusting net loss with current period accretion of redeemable convertible preferred stock. As we have reported net losses for all periods presented, all potentially dilutive securities are antidilutive and, accordingly, basic net loss per share equals diluted net loss per share.

**Unaudited Pro forma Net Loss Per Share Attributable to Common Stockholders**

The unaudited pro forma basic and diluted net loss per share attributable to common stockholders for the year ended December 31, 2018 and three months ended March 31, 2019 has been computed to give effect to (1) the automatic conversion of redeemable convertible preferred stock into common stock using the if-converted method immediately prior to the closing of a qualifying IPO as though such IPO had occurred as of the beginning of the period or the date of issuance, if later, and (2) weighted-average shares of common stock issued for Performance RSUs with both service-based and performance-based vesting conditions for which the service-based vesting condition was satisfied as of December 31, 2018 and March 31, 2019. These Performance RSUs will vest upon the satisfaction of the performance-based vesting condition in connection with the planned IPO. Stock-based compensation expense associated with these Performance RSUs is excluded from the pro forma net loss per share presentation.

**Recent Accounting Pronouncements Adopted**

**Business Combinations:** In January 2017, the FASB issued ASU No. 2017-01, Business Combinations (Topic 805): Clarifying the Definition of a Business, which changes the definition of a business to assist entities with evaluating when a set of transferred assets and activities is a business. If substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or a group of similar identifiable assets, the set of transferred assets and activities is not a business. We early adopted this ASU in the year ended December 31, 2018. The adoption of this ASU did not have a material impact on our consolidated financial statements.

**Goodwill Impairment:** In January 2017, the FASB issued ASU No. 2017-04, Intangibles—Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment. This ASU simplifies the measurement of goodwill by eliminating step two of the two-step impairment test. Step two measures a goodwill impairment loss by comparing the implied fair value of a reporting unit’s goodwill with the carrying amount of that goodwill. The new guidance requires an entity to compare the fair value of a reporting unit with its carrying amount and...
recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit’s fair value. Additionally, an entity should consider income tax effects from any tax-deductible goodwill on the carrying amount of the reporting unit when measuring the goodwill impairment loss, if applicable. The early adoption of this ASU in the year ended December 31, 2018 did not have a material impact on our consolidated financial statements.

Stock-Based Compensation: In May 2017, the FASB issued ASU No. 2017-09, Compensation—Stock Compensation (Topic 718): Scope of Modification Accounting, which provides clarity in applying the guidance in Topic 718 around modifications of stock-based payment awards. The adoption of this ASU in the year ended December 31, 2018 did not have a material impact on our consolidated financial statements.

Comprehensive Income: In February 2018, the FASB issued ASU No. 2018-02, Income Statement—Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income, which provides financial statement preparers with an option to reclassify stranded tax effects within accumulated other comprehensive income to retained earnings in each period in which the effect of the change in the U.S. federal corporate income tax rate in the Tax Cuts and Jobs Act (or portion thereof) is recorded. This ASU becomes effective for us for the year ending December 31, 2019 and the interim periods therein. Early adoption is permitted. The amendments in this ASU should be applied either in the period of adoption or retrospectively to each period (or periods) in which the effect of the change in the U.S. federal corporate income tax rate in the Tax Cuts and Jobs Act is recognized. The adoption of this ASU did not have a material impact on our consolidated financial statements.

New Accounting Pronouncements Not Yet Adopted

Leases: In February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842), which modifies lease accounting for lessees to increase transparency and comparability by recording lease assets and liabilities for operating leases and disclosing key information about leasing arrangements. In July 2018, the FASB issued ASU No. 2018-10, Codification Improvements to Topic 842, Leases, and ASU No. 2018-11, Leases (Topic 842), Targeted Improvements, which affect certain aspects of the previously issued guidance. In December 2018, the FASB issued ASU No. 2018-20, Narrow-Scope Improvements for Lessor, Leases (Topic 842), which provides guidance on sales tax and other taxes collected from lessees. In March 2019, the FASB issued ASU No. 2019-01, Codification Improvements to Topic 842, Leases, which affect certain aspects of the previously issued guidance. Amendments include an additional transition method that allows entities to apply the new standard on the adoption date and recognize a cumulative effect adjustment to the opening balance of retained earnings, as well as a new practical expedient for lessors. This ASU is effective for us for the year ending December 31, 2020 and interim periods within the year ending December 31, 2021. Early adoption is permitted. We are currently evaluating adoption methods and whether this ASU will have a material impact on our consolidated financial statements.

Stock-Based Compensation: In June 2018, the FASB issued ASU No. 2018-07, Improvements to Nonemployee Share-Based Payment Accounting. The standard simplifies the accounting for share-based payments granted to nonemployees for goods and services and aligns most of the guidance on such payments to the nonemployees with the requirements for share-based payments granted to employees. ASU No. 2018-07 is effective for us for the year ending December 15, 2020, and interim periods within the year ending December 31, 2021. Early adoption is permitted. We are currently evaluating the impact of this ASU on our consolidated financial statements.

Internal Use Software: In August 2018, the FASB issued ASU No. 2018-15, Intangibles-Goodwill and Other-Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract, which aligns the requirements for capitalizing implementation costs incurred in a cloud computing arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use-software. This ASU is effective
Revenue Recognition: In May 2014, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606) ("ASC 606"), which amends the existing accounting standards for revenue recognition. ASU No. 2014-09 is based on principles that govern the recognition of revenue at an amount an entity expects to be entitled when products are transferred to customers. ASU No. 2014-09 will be effective for us for our annual results for the year ending December 31, 2019, and our interim periods beginning after December 31, 2019. Subsequently, the FASB has issued the following standards related to ASU No. 2014-09: ASU No. 2016-08, Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations; ASU No. 2016-10, Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing; ASU No. 2016-12, Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients; and ASU No. 2016-20, Technical Corrections and Improvements to Topic 606, which clarifies narrow aspects of ASC 606 or corrects unintended application of the guidance.

We plan to adopt the new revenue standard using the modified retrospective transition method when it becomes effective for us, which is the year ending December 31, 2019 and interim periods beginning after December 31, 2019. We are in the process of reviewing our significant contracts and are evaluating the impact of the new standard. Based on our preliminary impact assessment of the Livongo for Diabetes solution, we believe that the overall promise to our customers is to improve member health results and reduce healthcare costs, and the delivery of this promise would not be possible without the integration of Livongo devices, supplies, access to our web-based platform, and clinical and data services. The promises to transfer the goods and services are not separately identifiable in accordance with ASC 606-10-25-19b, evidenced by the fact that we provide a significant service of integrating the goods and services provided by us (i.e., inputs) into a combined output (i.e., member behavior modifications) that result in the fulfillment of our promise to our customers. We are currently finalizing our assessment of the full accounting impact of the standard; however, we have identified the treatment of variable consideration will be impacted upon our adoption. Additionally, incremental costs of obtaining a contract will be recognized as assets to the extent the period of benefit is greater than one year. We continue to evaluate the effect that the standard will have on our consolidated financial statements, including disclosures, and preliminary assessments are subject to change.

3. Business Combinations

Diabeto Inc.

In August 2017, we acquired all of the issued and outstanding shares of Diabeto Inc. ("Diabeto"), a privately-held, New Jersey-based entity, and assumed all of Diabeto’s employees. Diabeto uses mobile and web technologies to connect care givers and patients with chronic conditions. The total purchase consideration was $2.6 million in cash, of which $0.6 million was paid in 2017 and $2.0 million was paid in 2018.
We have accounted for this acquisition as a business combination. The acquisition method requires, among other things, that assets acquired and liabilities assumed in a business combination be recognized at their fair values as of the acquisition date. The fair values of the assets acquired and liabilities assumed by major class were recognized as follows:

<table>
<thead>
<tr>
<th>Amount</th>
<th>(in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$1</td>
</tr>
<tr>
<td>Property and equipment</td>
<td>3</td>
</tr>
<tr>
<td>Acquired intangible assets</td>
<td>178</td>
</tr>
<tr>
<td>Liabilities assumed</td>
<td>(69)</td>
</tr>
<tr>
<td>Goodwill</td>
<td>2,486</td>
</tr>
<tr>
<td><strong>Total purchase consideration</strong></td>
<td><strong>$2,599</strong></td>
</tr>
</tbody>
</table>

The acquired intangible assets are comprised of $0.2 million related to developed technology which is amortized over five years and $8,000 related to trade name which is amortized over three years.

Goodwill represents the excess of the purchase consideration over the estimated acquisition date fair value of the net tangible and intangible assets acquired. Goodwill is primarily attributable to expected post-acquisition synergies from integrating Diabeto’s assembled workforce and developed technology into our product offerings and cross-selling opportunities. Goodwill recorded is not deductible for income tax purposes.

**Retrofit Inc.**

In April 2018, we acquired all of the issued and outstanding shares of Retrofit Inc. (“Retrofit”), a privately-held, Illinois-based entity, and a leading provider of weight-management and disease-prevention programs, through a share purchase agreement (the “Retrofit Purchase Agreement”) in exchange for cash consideration (the “Retrofit Acquisition”). The Retrofit Acquisition provides us with an evidence-based diabetes prevention program that enhances our data science capabilities and our expertise in holistic weight management including nutrition, exercise and mindset.

The total consideration transferred as part of the Retrofit Acquisition consisted of a cash payment on the closing date, adjusted for customary closing adjustments, of $12.4 million. Upon the close of the Retrofit Acquisition, as part of the Retrofit Purchase Agreement, we placed in escrow an earn-out consideration of $7.0 million held by a third-party escrow agent to be released to the former stockholders of Retrofit contingent upon achieving future qualified member targets as determined on December 31, 2018, 2019, and 2020 (the “Retrofit Contingent Consideration”). We recorded a corresponding escrow asset of $7.0 million on our consolidated balance sheet. We estimated the fair value of the Retrofit Contingent Consideration to be $6.2 million as of the acquisition date using a Monte Carlo simulation model, which together with the cash consideration resulted in total purchase consideration of $18.6 million. The Retrofit Contingent Consideration is subject to remeasurement at each reporting date until the payments are released from escrow, with the remeasurement adjustment reported in our consolidated statements of operations. On December 31, 2018, we subsequently reduced the fair value of the Retrofit Contingent Consideration to $5.0 million, with the change in fair value of $1.2 million recorded in our consolidated statements of operations. During the three months ended March 31, 2019 (unaudited), the change in the fair value of the Retrofit Contingent Consideration was immaterial.

Additionally, we recognized $0.3 million of acquisition-related costs as general and administrative expense in our consolidated statements of operations during the year ended December 31, 2018.
The purchase consideration of $18.6 million was allocated as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$87</td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>409</td>
</tr>
<tr>
<td>Inventories</td>
<td>56</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>124</td>
</tr>
<tr>
<td>Property and equipment</td>
<td>52</td>
</tr>
<tr>
<td>Intangible assets</td>
<td>5,580</td>
</tr>
<tr>
<td><strong>Total assets acquired</strong></td>
<td><strong>$6,308</strong></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$366</td>
</tr>
<tr>
<td>Accrued expenses and other liabilities</td>
<td>394</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>212</td>
</tr>
<tr>
<td><strong>Total liabilities assumed</strong></td>
<td><strong>$972</strong></td>
</tr>
<tr>
<td>Goodwill</td>
<td>$13,223</td>
</tr>
<tr>
<td><strong>Total purchase consideration</strong></td>
<td><strong>$18,559</strong></td>
</tr>
</tbody>
</table>

The following table sets forth the components of identifiable intangible assets acquired and their estimated useful lives as of the acquisition date:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost (in thousands)</th>
<th>Useful Life (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer relationships</td>
<td>$3,890</td>
<td>10.0</td>
</tr>
<tr>
<td>Developed technology</td>
<td>1,650</td>
<td>5.0</td>
</tr>
<tr>
<td>Trade name</td>
<td>40</td>
<td>2.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$5,580</strong></td>
<td></td>
</tr>
</tbody>
</table>

The fair value assigned to developed technology and trade name was determined using a relief from royalty method, where the owner of the asset realizes a benefit from owning the intangible asset rather than paying a rental or royalty rate for use of the asset. The fair value of customer relationships was determined using the multi-period excess earnings method, which estimates the revenue and cash flows derived from the asset and then deducts portions of the cash flows that can be attributed to supporting assets otherwise recognized.

Goodwill represents the excess of the purchase consideration over the estimated acquisition date fair value of the net tangible and intangible assets acquired and liabilities assumed. Goodwill is primarily attributable to expected post-acquisition synergies from integrating Retrofit’s assembled workforce and developed technology into our product offerings and cross-selling opportunities. Goodwill recorded is not deductible for income tax purposes.

Revenue and net loss of Retrofit included in our consolidated statement of operations for the year ended December 31, 2018 was $2.8 million and $3.2 million, respectively.

*Unaudited Pro Forma Financial Information*

The following unaudited pro forma information presents the combined results of operations as if the Retrofit Acquisition had been completed on January 1, 2017, the beginning of the comparable prior annual reporting period. The unaudited pro forma results include adjustments primarily related to the following: (i) interest expense related to the legacy debt of Retrofit that was not acquired; (ii) amortization of the acquired intangible
assets; (iii) recognition of post-acquisition stock-based compensation expense; (iv) the inclusion of acquisition-related costs as of the earliest period presented; and (v) the associated tax impact of the acquisitions and these unaudited pro forma adjustments. The results of operations of Diabeto are not material and, therefore, are not reflected in the unaudited pro forma results.

<table>
<thead>
<tr>
<th></th>
<th>December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
</tr>
<tr>
<td></td>
<td>(in thousands)</td>
</tr>
<tr>
<td>Revenue</td>
<td>$34,261</td>
</tr>
<tr>
<td>Net loss</td>
<td>$(21,621)</td>
</tr>
</tbody>
</table>

**myStrength, Inc.**

In February 2019, we acquired all of the issued and outstanding shares of myStrength, Inc. ("myStrength"), a privately-held entity based in Denver, Colorado, and a leading provider of digital behavioral health solutions through an agreement and plan of merger (the “myStrength Purchase Agreement”) in exchange for cash consideration (the “myStrength Acquisition”). The myStrength Acquisition will enable us to more fully address the health of the whole person by bringing behavioral health conditions including depression, anxiety, stress, substance use disorder, chronic pain, opioid addiction and recovery, and insomnia to our Applied Health Signals solution.

The total consideration for the myStrength Acquisition was $30.1 million in cash, subject to a closing adjustment of $0.1 million. As part of the myStrength Purchase Agreement, we are obligated to pay an earn-out consideration up to $5.0 million contingent upon satisfying future milestones for the year ending December 31, 2019 (the “myStrength Contingent Consideration”). We estimated the fair value of the myStrength Contingent Consideration to be $3.3 million as of the acquisition date using a Monte Carlo simulation model, which together with the cash consideration, resulted in total purchase consideration of $33.5 million. The myStrength Contingent Consideration is subject to remeasurement at each reporting date until the payments are made, with the remeasurement adjustment reported in our consolidated statements of operations. On March 31, 2019 (unaudited), we subsequently increased the fair value of the myStrength Contingent Consideration to $3.9 million, with the change in fair value of $0.6 million recorded in our consolidated statements of operations.

The purchase consideration of $33.5 million was allocated as follows:

<table>
<thead>
<tr>
<th>Amount</th>
<th>(unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$2,643</td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>1,337</td>
</tr>
<tr>
<td>Other current assets</td>
<td>140</td>
</tr>
<tr>
<td>Property and equipment</td>
<td>114</td>
</tr>
<tr>
<td>Intangible assets</td>
<td>13,900</td>
</tr>
<tr>
<td>Other assets</td>
<td>34</td>
</tr>
<tr>
<td>Total assets acquired</td>
<td>$18,168</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$173</td>
</tr>
<tr>
<td>Accrued expenses and other liabilities</td>
<td>1,787</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>1,400</td>
</tr>
<tr>
<td>Deferred tax liability, net</td>
<td>1,396</td>
</tr>
<tr>
<td>Total liabilities assumed</td>
<td>$4,756</td>
</tr>
<tr>
<td>Goodwill</td>
<td>$20,085</td>
</tr>
<tr>
<td>Total purchase consideration</td>
<td>$33,497</td>
</tr>
</tbody>
</table>
The following table sets forth the components of identifiable intangible assets acquired and their estimated useful lives as of the acquisition date:

<table>
<thead>
<tr>
<th></th>
<th>Cost (in thousands)</th>
<th>Useful Life (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer relationships</td>
<td>$4,300</td>
<td>7.0</td>
</tr>
<tr>
<td>Developed technology</td>
<td>9,200</td>
<td>7.0</td>
</tr>
<tr>
<td>Trade name</td>
<td>400</td>
<td>5.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$13,900</strong></td>
<td></td>
</tr>
</tbody>
</table>

The estimated fair values of the intangible assets acquired were determined based on the income approach to measure the fair value of the trade name, customer relationships, and developed technology. These fair value measurements were based on significant inputs not observable in the market and thus represent Level 3 measurements within the fair value hierarchy.

Additionally, during the year ended December 31, 2018 and the three months ended March 31, 2019, we incurred a total of $0.3 million (unaudited) of acquisition-related costs as a result of the myStrength acquisition.

Goodwill represents the excess of the purchase consideration over the estimated acquisition date fair value of the net tangible and intangible assets acquired and liabilities assumed. Goodwill is primarily attributable to expected post-acquisition synergies from integrating myStrength’s assembled workforce and developed technology into our product offerings and cross-selling opportunities. Goodwill recorded is not deductible for income tax purposes.

Revenue and net loss of myStrength included in our consolidated statement of operations for the three months ended March 31, 2019 was $1.0 million and $0.4 million, respectively.

**Unaudited Pro Forma Financial Information**

The following unaudited pro forma information presents the combined results of operations as if the myStrength Acquisition had been completed on January 1, 2018, the beginning of the comparable prior annual reporting period. The unaudited pro forma results include adjustments primarily related to the following: (i) interest expense related to the legacy debt of myStrength that was not acquired; (ii) amortization of the acquired intangible assets; (iii) fair value adjustment for deferred revenue; (iv) the inclusion of acquisition-related costs as of the earliest period presented; and (v) the associated tax impact of the acquisitions and these unaudited pro forma adjustments.

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2018 (unaudited)</td>
</tr>
<tr>
<td>Revenue</td>
<td>$13,458</td>
</tr>
<tr>
<td>Net loss</td>
<td>$(6,343)</td>
</tr>
</tbody>
</table>

**4. Balance Sheet Components**

**Inventories**

Inventories of $2.9 million, $8.9 million, and $8.5 million as of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited), respectively, consisted of finished goods.
Property and Equipment, Net

Property and equipment consisted of the following:

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2017</th>
<th>March 31, 2019 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computer equipment and software</td>
<td>$189</td>
<td>$652</td>
</tr>
<tr>
<td>Furniture and fixtures</td>
<td>396</td>
<td>730</td>
</tr>
<tr>
<td>Capitalized internal-use software</td>
<td>1,636</td>
<td>5,655</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>357</td>
<td>585</td>
</tr>
<tr>
<td>Property and equipment</td>
<td>2,578</td>
<td>7,620</td>
</tr>
<tr>
<td>Less: accumulated depreciation</td>
<td>(519)</td>
<td>(1,783)</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>$2,059</td>
<td>$5,837</td>
</tr>
</tbody>
</table>

Depreciation and amortization expense was $0.3 million and $1.3 million for the years ended December 31, 2017 and 2018, respectively, and $0.2 million and $0.7 million for the three months ended March 31, 2018 and 2019 (unaudited), respectively.

Intangible Assets, Net

Intangible assets consisted of the following as of December 31, 2017:

<table>
<thead>
<tr>
<th></th>
<th>Gross Value</th>
<th>Accumulated Amortization</th>
<th>Net Book Value</th>
<th>Weighted-Average Remaining Useful Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developed technology</td>
<td>$170</td>
<td>$11</td>
<td>$159</td>
<td>4.7</td>
</tr>
<tr>
<td>Trade name</td>
<td>8</td>
<td>(1)</td>
<td>7</td>
<td>2.7</td>
</tr>
<tr>
<td>Total</td>
<td>$178</td>
<td>(12)</td>
<td>$166</td>
<td></td>
</tr>
</tbody>
</table>

Intangible assets consisted of the following as of December 31, 2018:

<table>
<thead>
<tr>
<th></th>
<th>Gross Value</th>
<th>Accumulated Amortization</th>
<th>Net Book Value</th>
<th>Weighted-Average Remaining Useful Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer relationships</td>
<td>$3,890</td>
<td>(266)</td>
<td>$3,624</td>
<td>9.3</td>
</tr>
<tr>
<td>Developed technology</td>
<td>1,820</td>
<td>(329)</td>
<td>1,491</td>
<td>4.3</td>
</tr>
<tr>
<td>Trade names</td>
<td>48</td>
<td>(9)</td>
<td>39</td>
<td>1.4</td>
</tr>
<tr>
<td>Total</td>
<td>$5,758</td>
<td>(604)</td>
<td>$5,154</td>
<td></td>
</tr>
</tbody>
</table>
Intangible assets consisted of the following as of March 31, 2019 (unaudited):

<table>
<thead>
<tr>
<th></th>
<th>Gross Value</th>
<th>Accumulated Amortization</th>
<th>Net Book Value</th>
<th>Weighted-Average Remaining Useful Life</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td>(in thousands)</td>
<td>(in thousands)</td>
<td>(years)</td>
</tr>
<tr>
<td>Customer relationships</td>
<td>$8,190</td>
<td>$ (475)</td>
<td>$ 7,715</td>
<td>7.8</td>
</tr>
<tr>
<td>Developed technology</td>
<td>11,020</td>
<td>(656)</td>
<td>10,364</td>
<td>6.4</td>
</tr>
<tr>
<td>Trade names</td>
<td>448</td>
<td>(37)</td>
<td>411</td>
<td>4.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$19,658</strong></td>
<td><strong>$ (1,168)</strong></td>
<td><strong>$18,490</strong></td>
<td></td>
</tr>
</tbody>
</table>

Amortization expense for intangible assets for the years ended December 31, 2017 and 2018 and three months ended March 31, 2018 and 2019 (unaudited) is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31, 2017</th>
<th>Three Months Ended March 31, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Amount</td>
<td>Amount</td>
</tr>
<tr>
<td></td>
<td>(in thousands)</td>
<td>(in thousands)</td>
</tr>
<tr>
<td>Customer relationships</td>
<td>$ —</td>
<td>$ 266</td>
</tr>
<tr>
<td>Developed technology</td>
<td>11</td>
<td>318</td>
</tr>
<tr>
<td>Trade names</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 12</strong></td>
<td><strong>$ 592</strong></td>
</tr>
</tbody>
</table>

The expected future amortization expense related to intangible assets as of December 31, 2018 was as follows:

<table>
<thead>
<tr>
<th></th>
<th>Amount (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>$ 744</td>
</tr>
<tr>
<td>2020</td>
<td>761</td>
</tr>
<tr>
<td>2021</td>
<td>753</td>
</tr>
<tr>
<td>2022</td>
<td>742</td>
</tr>
<tr>
<td>2023</td>
<td>485</td>
</tr>
<tr>
<td>Thereafter</td>
<td>1,669</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 5,154</strong></td>
</tr>
</tbody>
</table>

The expected future amortization expense related to intangible assets as of March 31, 2019 (unaudited) was as follows:

<table>
<thead>
<tr>
<th></th>
<th>Amount (unaudited) (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remainder of 2019</td>
<td>$ 2,021</td>
</tr>
<tr>
<td>2020</td>
<td>2,769</td>
</tr>
<tr>
<td>2021</td>
<td>2,762</td>
</tr>
<tr>
<td>2022</td>
<td>2,750</td>
</tr>
<tr>
<td>2023</td>
<td>2,494</td>
</tr>
<tr>
<td>Thereafter</td>
<td>5,694</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 18,490</strong></td>
</tr>
</tbody>
</table>
**Goodwill**

Goodwill consisted of the following:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31, (in thousands)</th>
<th>Three Months Ended March 31, 2019 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>Beginning balance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goodwill acquired (Note 3)</td>
<td>2,486</td>
<td>13,223</td>
</tr>
<tr>
<td>Ending balance</td>
<td>2,486</td>
<td>15,709</td>
</tr>
</tbody>
</table>

**Prepaid Expenses and Other Current Assets**

Prepaid expenses and other current assets consisted of the following:

<table>
<thead>
<tr>
<th></th>
<th>December 31, (in thousands)</th>
<th>March 31, 2019 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>Short-term deposits</td>
<td>130</td>
<td>718</td>
</tr>
<tr>
<td>Prepaid rent</td>
<td>179</td>
<td>227</td>
</tr>
<tr>
<td>Other prepaid expenses</td>
<td>980</td>
<td>2,084</td>
</tr>
<tr>
<td>Escrow deposit, current</td>
<td></td>
<td>1,750</td>
</tr>
<tr>
<td>Other current assets</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>1,293</td>
<td>4,935</td>
</tr>
</tbody>
</table>

**Other Noncurrent Assets**

Other noncurrent assets consisted of the following:

<table>
<thead>
<tr>
<th></th>
<th>December 31, (in thousands)</th>
<th>March 31, 2019 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>Escrow deposit, noncurrent</td>
<td></td>
<td>$5,250</td>
</tr>
<tr>
<td>Other</td>
<td>92</td>
<td>235</td>
</tr>
<tr>
<td>Total</td>
<td>$92</td>
<td>$5,485</td>
</tr>
</tbody>
</table>

F-27
Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following:

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2017</th>
<th>March 31, 2019 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td>(in thousands)</td>
</tr>
<tr>
<td>Accrued payroll and employee benefits</td>
<td>$1,148</td>
<td>$ 1,447</td>
</tr>
<tr>
<td>Accrued bonus</td>
<td>2,686</td>
<td>5,857</td>
</tr>
<tr>
<td>Accrued sales and use taxes</td>
<td>706</td>
<td>1,887</td>
</tr>
<tr>
<td>Accrued rebates</td>
<td>160</td>
<td>609</td>
</tr>
<tr>
<td>Vendor accruals</td>
<td>19</td>
<td>1,574</td>
</tr>
<tr>
<td>Accrued commissions</td>
<td>714</td>
<td>1,470</td>
</tr>
<tr>
<td>Contingent consideration, current</td>
<td>—</td>
<td>1,316</td>
</tr>
<tr>
<td>Accrued professional services</td>
<td>13</td>
<td>295</td>
</tr>
<tr>
<td>Other accrued expenses</td>
<td>648</td>
<td>1,574</td>
</tr>
<tr>
<td>Total</td>
<td>$6,094</td>
<td>$16,152</td>
</tr>
</tbody>
</table>

5. Fair Value Measurements

The following table sets forth the fair value of our financial assets and liabilities by level within the fair value hierarchy:

<table>
<thead>
<tr>
<th>Assets</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
<th>Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash equivalents:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Money market funds</td>
<td>$52,312</td>
<td>$ —</td>
<td>$ —</td>
<td>$52,312</td>
</tr>
<tr>
<td>Total assets at fair value</td>
<td>$52,312</td>
<td>$ —</td>
<td>$ —</td>
<td>$52,312</td>
</tr>
</tbody>
</table>
Our valuation techniques used to measure the fair value of money market funds are derived from quoted prices in active markets for identical assets or liabilities.

In connection with the Retrofit Acquisition in April 2018, we recorded a contingent consideration liability, which will be payable subject to the achievement of certain targets for 2018, 2019, and 2020. In connection with the myStrength Acquisition in February 2019, we recorded a contingent liability, which will be payable subject to the achievement of certain targets for 2019. The fair values of these contingent consideration liabilities were estimated with a Monte Carlo simulation model using Level 3 inputs, including projected qualified members, revenue volatility, and other market variables to assess the probability of us achieving the targets, and any subsequent changes in fair value are recorded in the consolidated statements of operations until settlement.

The following table sets forth the changes in our Level 3 financial liability during the year ended December 31, 2018 and during the three months ended March 31, 2019 (unaudited):

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31, 2018</th>
<th>Three Months Ended March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
</tr>
<tr>
<td>Beginning balance</td>
<td>$ —</td>
<td>$ 5,004</td>
</tr>
<tr>
<td>Contingent consideration recorded upon acquisition (Note 3)</td>
<td>6,204</td>
<td>3,300</td>
</tr>
<tr>
<td>Change in fair value of contingent consideration (Note 3)</td>
<td>(1,200)</td>
<td>674</td>
</tr>
<tr>
<td>Ending balance</td>
<td>$ 5,004</td>
<td>$ 8,978</td>
</tr>
</tbody>
</table>
6. Long-Term Debt

In September 2014, we entered into a loan and security agreement with available borrowings up to $4.0 million from a bank, and we drew down $1.0 million in February 2015. This loan required us to make 36 equal monthly installments of principal payments from September 2015 through August 2018.

In April 2015, we amended the loan and security agreement to add a term loan up to $5.0 million from the bank, and we drew down $5.0 million in August 2015. This term loan required us to make 36 equal monthly installments of principal payments from April 2016 through March 2019. In April 2017, we made early repayment and paid off the remaining principal balance of term loans totaling $3.6 million.

During the year ended December 31, 2017, we made loan payments of $4.3 million in the aggregate. Both loans carried an interest rate of 0.25% above the prime rate. Interest was payable monthly on the outstanding principal balance of the term loan. The loans were collateralized by substantially all of our assets. Under the amendment, we were required to maintain trailing three-month revenue amount specified in the amendment.

Borrowing under the loans required us to issue common stock warrants with an intrinsic value equal to 1.0% of the principal amount drawn down. In connection with the drawdown of $1.0 million in February 2015, we issued 27,777 common stock warrants at an exercise price of $0.36 per share. In connection with the drawdown of $5.0 million in August 2015, we issued 62,500 common stock warrants at an exercise price of $0.80 per share. The aggregate fair value of these warrants upon issuance was recorded as debt discount upon issuance to be amortized as interest expense over the contractual term of the loans using the effective interest rate method. During the year ended December 31, 2017, we recognized interest expense related to amortization of the debt discount in the amount of $20,000.

7. Commitments and Contingencies

Operating Leases

We have entered into various noncancelable operating lease agreements primarily for our offices. We recognize operating lease costs on a straight-line basis over the term of each agreement, considering provisions such as free or escalating base monthly rental payments or deferred payment terms. We record rent expense associated with operating lease obligations in operating expenses in the consolidated statements of operations.

As of December 31, 2018, our net minimum payments under the noncancelable operating leases are as follows:

<table>
<thead>
<tr>
<th>Year Ending December 31</th>
<th>Minimum Lease Payments (in thousands)</th>
<th>Sublease Income</th>
<th>Net Minimum Lease Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>$ 2,027</td>
<td>$ 22</td>
<td>$ 2,005</td>
</tr>
<tr>
<td>2020</td>
<td>824</td>
<td>23</td>
<td>801</td>
</tr>
<tr>
<td>2021</td>
<td>729</td>
<td>24</td>
<td>705</td>
</tr>
<tr>
<td>2022</td>
<td>748</td>
<td>24</td>
<td>724</td>
</tr>
<tr>
<td>2023</td>
<td>606</td>
<td>25</td>
<td>581</td>
</tr>
<tr>
<td>Thereafter</td>
<td>296</td>
<td>25</td>
<td>271</td>
</tr>
<tr>
<td>Total future minimum payments</td>
<td>$ 5,230</td>
<td>$ 143</td>
<td>$ 5,087</td>
</tr>
</tbody>
</table>
As of March 31, 2019 (unaudited), our net minimum payments under the noncancelable operating leases are as follows:

<table>
<thead>
<tr>
<th>Year Ending December 31.</th>
<th>Minimum Lease Payments</th>
<th>Sublease Income</th>
<th>Net Minimum Lease Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remainder of 2019</td>
<td>$ 1,638</td>
<td>$ 41</td>
<td>$ 1,597</td>
</tr>
<tr>
<td>2020</td>
<td>1,006</td>
<td>61</td>
<td>945</td>
</tr>
<tr>
<td>2021</td>
<td>915</td>
<td>62</td>
<td>853</td>
</tr>
<tr>
<td>2022</td>
<td>939</td>
<td>63</td>
<td>876</td>
</tr>
<tr>
<td>2023</td>
<td>800</td>
<td>65</td>
<td>735</td>
</tr>
<tr>
<td>Thereafter</td>
<td>495</td>
<td>66</td>
<td>429</td>
</tr>
<tr>
<td>Total future minimum payments</td>
<td>$ 5,793</td>
<td>$ 358</td>
<td>$ 5,435</td>
</tr>
</tbody>
</table>

Total rent expense paid to third parties was $0.7 million and $1.7 million during the years ended December 31, 2017 and 2018, respectively, and $0.4 million and $0.6 million for the three months ended March 31, 2018 and 2019 (unaudited), respectively.

In 2017 and 2019, we entered into sublease arrangements with a stockholder for space for our Chicago, Illinois office. See further discussion in Note 14. Rent expense incurred for sublease arrangements was $0.1 million and $0.3 million during the years ended December 31, 2017 and 2018, and less than $0.1 million for both of the three months ended March 31, 2018 and 2019 (unaudited).

**Legal Matters**

From time to time, we become involved in claims and other legal matters arising in the ordinary course of business. We investigate these claims as they arise. Although claims are inherently unpredictable, we are currently not aware of any matters that, if determined adversely to us, would individually or taken together have a material adverse effect on our business, results of operations, financial position or cash flows.

We accrue estimates for resolution of legal and other contingencies when losses are probable and estimable.

Although the results of litigation and claims are inherently unpredictable, we have not recorded an accrual for such contingencies as we believe that there was not at least a reasonable possibility that we had incurred a material loss with respect to such loss contingencies as of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited).

**Indemnification**

We enter into indemnification provisions under our agreements with other companies in the ordinary course of business, including, but not limited to, clients, business partners, landlords, contractors and parties performing our research and development. Pursuant to these arrangements, we agree to indemnify, hold harmless, and reimburse the indemnified party for certain losses suffered or incurred by the indemnified party as a result of our activities. The terms of these indemnification agreements are generally perpetual. The maximum potential amount of future payments we could be required to make under these agreements is not determinable. We have never incurred costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, we believe the fair value of these agreements is not material. We maintain commercial general liability insurance and product liability insurance to offset certain of our potential liabilities under these indemnification provisions.

In addition, we indemnify our officers, directors and certain key employees while they are serving in good faith in their respective capacities. To date, there have been no claims under these indemnification provisions.
8. Stockholders’ Equity

**Redeemable Convertible Preferred Stock**

We record our redeemable convertible preferred stock at fair value on the dates of issuance, net of issuance costs. Although not currently redeemable, we classify our redeemable convertible preferred stock outside of stockholders’ deficit because it is redeemable in the future at the option of our preferred stock holders. We have concluded that the convertible preferred stock is considered probable of becoming redeemable. Accordingly, redeemable convertible preferred stock is accreted for the difference between the initial net carrying value and the redemption value on April 10, 2023, the earliest redemption date using the effective interest rate method. During the years ended December 31, 2017 and 2018 and the three months ended March 31, 2018 and 2019 (unaudited), we recognized accretion of $0.1 million, $0.2 million, less than $0.1 million, and less than $0.1 million, respectively, as an increase in the carrying value of the redeemable convertible preferred stock, and a decrease to our additional paid-in capital.

In March 2017, we issued 11,773,932 shares of Series D redeemable convertible preferred stock for total consideration of $52.5 million. The original issue price and initial conversion price of Series D redeemable convertible preferred stock is $4.4590 per share. Series D redeemable convertible preferred stock has the same liquidation preference, voting rights and conversion rights as Series B and Series C redeemable convertible preferred stock. The holders of Series D redeemable convertible preferred stock are entitled to receive noncumulative dividends, prior to and in preference of any declaration or payment of any dividends on the common stock, at a rate per annum of $0.3568 per share. Upon issuance of Series D redeemable convertible preferred stock, we increased the authorized number of shares to 80,000,000 shares of common stock and 45,960,013 shares of redeemable convertible preferred stock. We also revised the redemption rights of redeemable convertible preferred stock such that all series of outstanding redeemable convertible preferred stock are eligible to be redeemed for cash in full upon a written notice by a majority of the holders on or after March 10, 2022.

In April 2018, we issued 12,655,477 shares of Series E redeemable convertible preferred stock for a total consideration of $105.0 million. The original issue price and initial conversion price of Series E redeemable convertible preferred stock is $8.2968 per share. Series E redeemable convertible preferred stock has the same liquidation preference, voting rights and conversion rights as Series A, Series B, Series C and Series D redeemable convertible preferred stock. The holders of Series E redeemable convertible preferred stock are entitled to receive noncumulative dividends, prior to and in preference of any declaration or payment of any dividends on the common stock, at a rate per annum of $0.6638 per share. Upon issuance of Series E redeemable convertible preferred stock, we increased the authorized share number to 99,250,000 shares of common stock and 58,615,488 shares of redeemable convertible preferred stock. We also revised the redemption rights of redeemable convertible preferred stock such that all series of outstanding redeemable convertible preferred stock are eligible to be redeemed for cash in full upon a written notice by a majority of the holders on or after April 10, 2023.

Redeemable convertible preferred stock outstanding as of December 31, 2017, December 31, 2018 and March 31, 2019 (unaudited) consisted of the following:

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Shares Authorized</td>
</tr>
<tr>
<td></td>
<td>(in thousands)</td>
</tr>
<tr>
<td>Series A</td>
<td>10,394</td>
</tr>
<tr>
<td>Series B</td>
<td>8,935</td>
</tr>
<tr>
<td>Series C</td>
<td>14,857</td>
</tr>
<tr>
<td>Series D</td>
<td>11,774</td>
</tr>
<tr>
<td>Total redeemable convertible preferred stock</td>
<td>45,960</td>
</tr>
</tbody>
</table>

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The holders of Series A, Series B, Series C, Series D and Series E redeemable convertible preferred stock are entitled to receive non-cumulative dividends, out of any assets legally available, prior and in preference to any declaration or payment of any dividend on the common stock at the rate of $0.081968, $0.1824, $0.2666, $0.3568, and $0.6638 per share, respectively (as adjusted for stock dividends, stock splits, combinations, or other similar recapitalizations) per annum on each outstanding share, when, as, and if declared by the board of directors. As of December 31, 2018 and March 31, 2019 (unaudited), we have never declared nor paid dividends.

Liquidation Preference

In the event of our voluntary or involuntary liquidation, dissolution, or winding up, or a deemed liquidation event, the holders of each series of redeemable convertible preferred stock outstanding are entitled to be paid out our assets available for distribution to stockholders, before any payment is made to the holders of common stock, an amount per share equal to the greater of (a) the applicable original issue price for such series of redeemable convertible preferred stock, plus any dividends declared but unpaid thereon, or (b) such amount per share as would have been payable had all shares of redeemable convertible preferred stock been converted into common stock immediately prior to such liquidation, dissolution, winding up or deemed liquidation. After the payment of all preferential amounts required to be paid to the holders of redeemable convertible preferred stock, our remaining assets available for distribution to our stockholders shall be distributed among the holders of shares of common stock, pro rata based on the number of shares of common stock held by such holder.

If, upon any such liquidation, dissolution, winding up, or deemed liquidation event, our assets available for distribution to our stockholders are insufficient to pay the holders of shares of redeemable convertible preferred stock the full amount to which they are entitled, the holders of redeemable convertible preferred stock will share
Voting Rights

The holders of each share of redeemable convertible preferred stock have the right to one vote for each share of common stock into which such redeemable convertible preferred stock could then be converted and, with respect to such vote, holders of redeemable convertible preferred stock are entitled to vote together with the holders of common stock as a single class.

Conversion Rights

Each share of redeemable convertible preferred stock is convertible, at the option of the holder, into fully paid and non-assessable shares of common stock determined by dividing the applicable original issue price by the applicable conversion price in effect at the time of conversion. The original issue prices and initial conversion prices of Series A, Series B, Series C, Series D, and Series E redeemable convertible preferred stock are $1.0246, $2.2384, $3.3318, $4.4590, and $8.2968 per share, respectively. As of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited), each share of Series A, Series B, Series C, Series D, and Series E redeemable convertible preferred stock is convertible into common stock on a one-for-one basis.

Redemption Rights

On or after April 10, 2023, all outstanding shares of redeemable convertible preferred stock are eligible to be redeemed for cash in full upon a written notice by a majority of the holders of the outstanding redeemable convertible preferred stock. In the event of redemption, each holder of redeemable convertible preferred stock is entitled to receive the original issue price per share, plus any declared but unpaid dividends, in three annual installments.
Common Stock

As of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited), we were authorized to issue 84,750,000 shares, 99,250,000 shares, and 101,750,000 shares of common stock, respectively, with a par value of $0.001 per share. We reserved shares of common stock, on an as-if-converted basis, for future issuance as follows:

<table>
<thead>
<tr>
<th>December 31, 2017 (unaudited)</th>
<th>December 31, 2018</th>
<th>March 31, 2019 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Redemable convertible preferred stock</td>
<td>45,960</td>
<td>58,615</td>
</tr>
<tr>
<td>Outstanding warrants to purchase common stock</td>
<td>785</td>
<td>785</td>
</tr>
<tr>
<td>Outstanding options to purchase common stock</td>
<td>15,628</td>
<td>17,571</td>
</tr>
<tr>
<td>Outstanding restricted stock units</td>
<td>—</td>
<td>1,827</td>
</tr>
<tr>
<td>Restricted stock awards subject to repurchase</td>
<td>1,127</td>
<td>—</td>
</tr>
<tr>
<td>Available for future issuance</td>
<td>3,014</td>
<td>1,741</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>66,514</strong></td>
<td><strong>80,539</strong></td>
</tr>
</tbody>
</table>

9. Common Stock Warrants

Common stock warrants outstanding as of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited) are as follows:

<table>
<thead>
<tr>
<th>Holder</th>
<th>Issue Date</th>
<th>Outstanding Shares (in thousands)</th>
<th>Exercise Price</th>
<th>Exercisable Shares (in thousands)</th>
<th>Expiration Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank</td>
<td>4/16/2015</td>
<td>28</td>
<td>$0.36</td>
<td>28</td>
<td>09/05/2024*</td>
</tr>
<tr>
<td>Bank</td>
<td>4/16/2015</td>
<td>63</td>
<td>$0.80</td>
<td>63</td>
<td>04/16/2025*</td>
</tr>
<tr>
<td>Partner</td>
<td>3/1/2015</td>
<td>694</td>
<td>$2.28</td>
<td>694</td>
<td>02/28/2025</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>785</strong></td>
<td></td>
<td><strong>785</strong></td>
<td></td>
</tr>
</tbody>
</table>

* If we complete an initial public offering within the three-year period immediately prior to the expiration date of this warrant, the expiration date will automatically be extended until the third anniversary of the effective date of the initial public offering.

Common stock warrant activity during the years ended December 31, 2017, December 31, 2018, and the three months ended March 31, 2019 (unaudited) is as follows:

<table>
<thead>
<tr>
<th>Year Ended December 31</th>
<th>Three Months Ended March 31, 2019 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>(in thousands)</td>
<td></td>
</tr>
<tr>
<td>Outstanding, beginning of period</td>
<td>2,188</td>
</tr>
<tr>
<td>Exercised</td>
<td>(361)</td>
</tr>
<tr>
<td>Forfeited or expired</td>
<td>(1,042)</td>
</tr>
<tr>
<td>Outstanding, end of period</td>
<td>785</td>
</tr>
</tbody>
</table>

During the year ended December 31, 2017, 361,425 common stock warrants were exercised for total proceeds of $0.3 million. No warrants were exercised during the year ended December 31, 2018 or the three months ended March 31, 2019 (unaudited).
10. Stock-Based Compensation

In November 2008, we adopted the EosHealth, Inc. 2008 Stock Incentive Plan (the “2008 Plan”), and in April 2014 we adopted the Livongo Health, Inc. 2014 Stock Incentive Plan (the “2014 Plan”) (collectively, the “Plans”) to grant equity-based incentives to certain officers, directors, consultants and employees. The 2014 Plan is intended as the successor to the 2008 Plan. Following April 22, 2014 (the “Effective Date”), no additional stock awards were granted under the 2008 Plan. From and after the Effective Date, all outstanding stock awards granted under the 2008 Plan remain subject to the terms of the 2008 Plan; however, if any shares underlying outstanding stock awards granted under the 2008 Plan expire or are terminated for any reasons prior to exercise, settlement or forfeiture because of the failure to meet a contingency or condition required to vest, such shares become available for issuance pursuant to awards granted under the 2014 Plan. All awards granted on or after the adoption of the 2014 Plan are subject to the terms of the 2014 Plan.

Stock Options

Stock options granted generally vest over four years with 25% of the option shares vesting one year from the vesting commencement date and then ratably over the following 36 months. Options generally expire 10 years from the date of grant.
Stock option activity under the Plans is as follows:

<table>
<thead>
<tr>
<th>Shares Available</th>
<th>Shares Subject to Options Outstanding</th>
<th>Weighted-Average Exercise Price</th>
<th>Weighted-Average Remaining Contractual Life (Years)</th>
<th>Aggregate Intrinsic Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grant</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shares authorized</td>
<td>8,661</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Granted</td>
<td>(5,996)</td>
<td>5,996</td>
<td>$ 1.88</td>
<td>$ 9,623</td>
</tr>
<tr>
<td>Exercised</td>
<td>—</td>
<td>(1,372)</td>
<td>$ 0.78</td>
<td>—</td>
</tr>
<tr>
<td>Forfeited</td>
<td>1,205</td>
<td>(1,205)</td>
<td>$ 0.87</td>
<td>—</td>
</tr>
<tr>
<td>Restricted stock awards granted</td>
<td>(1,064)</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Balance as of December 31, 2017</td>
<td>3,014</td>
<td>15,628</td>
<td>$ 1.20</td>
<td>$ 10,559</td>
</tr>
<tr>
<td>Shares authorized</td>
<td>3,196</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Granted</td>
<td>(5,016)</td>
<td>5,016</td>
<td>$ 3.62</td>
<td>—</td>
</tr>
<tr>
<td>Exercised</td>
<td>—</td>
<td>(1,454)</td>
<td>$ 1.19</td>
<td>—</td>
</tr>
<tr>
<td>Forfeited</td>
<td>1,619</td>
<td>(1,619)</td>
<td>$ 2.25</td>
<td>—</td>
</tr>
<tr>
<td>Performance RSUs granted</td>
<td>(1,830)</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Restricted stock awards forfeited</td>
<td>754</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Performance RSUs forfeited</td>
<td>4</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Balance as of December 31, 2018</td>
<td>1,741</td>
<td>17,571</td>
<td>$ 1.80</td>
<td>$ 89,990</td>
</tr>
<tr>
<td>Shares authorized</td>
<td>2,500</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Exercised (unaudited)</td>
<td>—</td>
<td>(454)</td>
<td>$ 0.69</td>
<td>—</td>
</tr>
<tr>
<td>Forfeited/cancelled (unaudited)</td>
<td>377</td>
<td>(377)</td>
<td>$ 3.26</td>
<td>—</td>
</tr>
<tr>
<td>Restricted stock units and Performance RSUs granted (unaudited)</td>
<td>(2,363)</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Restricted stock awards granted (unaudited)</td>
<td>(982)</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Performance RSUs forfeited (unaudited)</td>
<td>9</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Balance as of March 31, 2019 (unaudited)</td>
<td>1,282</td>
<td>16,740</td>
<td>$ 1.80</td>
<td>$151,531</td>
</tr>
<tr>
<td>Options vested and exercisable as of December 31, 2017</td>
<td>1,282</td>
<td>16,740</td>
<td>$ 1.80</td>
<td>$7,388</td>
</tr>
<tr>
<td>Options vested and exercisable as of December 31, 2018</td>
<td>8,999</td>
<td>9,220</td>
<td>$ 0.97</td>
<td>$53,566</td>
</tr>
<tr>
<td>Options vested and exercisable as of March 31, 2019 (unaudited)</td>
<td>9,348</td>
<td>9,348</td>
<td>$ 1.07</td>
<td>$91,452</td>
</tr>
</tbody>
</table>

During the years ended December 31, 2017 and 2018 and the three months ended March 31, 2018 and 2019 (unaudited), the aggregate intrinsic value of stock option awards exercised was $1.5 million, $5.5 million, $1.0 million, and $4.2 million, respectively. Aggregate intrinsic value represents the difference between the exercise price and the fair value of the underlying common stock on the date of exercise.

The weighted-average grant date fair value of stock options granted to employees during the years ended December 31, 2017 and 2018 was $0.75 and $1.52 per share, respectively. No options were granted during the three months ended March 31, 2018 and 2019 (unaudited). As of December 31, 2018, total unrecognized compensation expense related to unvested stock options and Performance RSUs granted to employees was $18.2 million, which was expected to be recognized over a weighted-average period of 3.4 years. As of March 31, 2019 (unaudited), total unrecognized compensation expense related to unvested stock options, Performance RSUs, and restricted stock units granted to employees was $31.8 million, which was expected to be recognized over a weighted-average period of 3.5 years.

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Determination of Fair Value

The fair value of each option award granted to employees is estimated on the grant date using the Black-Scholes option pricing model. The Black-Scholes option pricing model requires the input of subjective assumptions, including the fair value of the underlying common stock, the expected term of the option, the expected volatility of the price of our common stock, risk-free interest rates, and the dividend yield of our common stock. The assumptions used to determine the fair value of the option awards represent our best estimates. These estimates involve inherent uncertainties and the application of our judgment. The related stock-based compensation expense is recognized on a straight-line basis over the requisite service period of the awards, which is generally four years.

The Black-Scholes assumptions used in evaluating our awards to employees are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Year Ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>Expected term (years)</td>
<td>6.3</td>
<td>6.0–6.8</td>
</tr>
<tr>
<td>Expected volatility</td>
<td>37.1%</td>
<td>36.6%–38.7%</td>
</tr>
<tr>
<td>Risk-free interest rate</td>
<td>2.0%–2.3%</td>
<td>2.8%–2.9%</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>—%</td>
<td>—%</td>
</tr>
</tbody>
</table>

Options and Restricted Stock Units with Service- and Market-Based Vesting Conditions

In January 2018 and June 2018, we granted a total of 1,402,820 options with a combination of service- and market-based vesting conditions to an executive, of which 196,460 shares were subsequently cancelled in March 2019. In January 2019, we granted 161,250 shares of restricted stock units with a combination of service- and market-based vesting conditions to another executive. For these options and restricted stock units, the market-based condition will be satisfied upon reaching certain equity valuation milestones based on a third-party valuation or total market capitalization following an IPO. 25% of these option grants and restricted stock units will vest on the later of (i) the first annual anniversary from the grant date or (ii) the satisfaction of the market-based vesting condition, while the remaining options and restricted stock units will vest in equal monthly installments over the next 36 months subject to satisfaction of the market-based vesting condition. The probabilities of the actual number of options and restricted stock units expected to vest are reflected in the grant date fair values, and the compensation expense for these awards will be recognized assuming the requisite service period is rendered and will not be adjusted based on the actual number of options or restricted stock units that ultimately vest. We recognize the stock-based compensation expense over the longer period between the requisite service period and the derived service period, which is the expected period to reach the specified condition for each grant.

The estimated fair value of these options and restricted stock units were determined on the date of grant using the Monte Carlo simulation model, which utilizes multiple input variables to simulate a range of our possible future equity values and estimates the probabilities of the potential payouts. The determination of the estimated grant date fair value of these options and restricted stock units is affected by our equity valuation and a number of assumptions including our future estimated enterprise value, our risk-free interest rate, expected volatility and dividend yield. The following assumptions were used to calculate the fair value of these options and restricted stock units in the Monte Carlo simulation model at the grant dates:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2018</td>
<td>2018 (unaudited)</td>
</tr>
<tr>
<td>Expected term (years)</td>
<td>9.6–10.0</td>
<td>10.0</td>
</tr>
<tr>
<td>Expected volatility</td>
<td>60.0%–64.0%</td>
<td>64%</td>
</tr>
<tr>
<td>Risk-free interest rate</td>
<td>2.6%–2.9%</td>
<td>2.6%</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>—%</td>
<td>—%</td>
</tr>
</tbody>
</table>

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The exercise price of the January 2018 market-based options was modified in June 2018. We used the Monte Carlo simulation model to determine the fair value of the modified option grants immediately before the modification and immediately after the modification, and noticed no increase in the fair value of the modified option grants. The remaining grant date fair value of the modified options is being recognized over the longer of the remaining explicit service period or the remaining new derived service period determined from the modification analysis.

The aggregate grant date fair values of these market-based options granted during the year ended December 31, 2018 and market-based restricted stock units granted during the three months ended March 31, 2019 (unaudited) were $2.4 million and $0.8 million, respectively. During the year ended December 31, 2018 and the three months ended March 31, 2018 and 2019 (unaudited), we recognized $0.5 million, $0.1 million, and $0.2 million of stock-based compensation expense, respectively, related to these grants in our consolidated statements of operations. Stock-based compensation expense of $0.2 million related to the cancelled market-based options was recorded in our consolidated statements of operations for the three months ended March 31, 2019 (unaudited).

The unrecognized stock-based compensation expense for market-based awards as of March 31, 2019 (unaudited) was $2.3 million, which is expected to be recognized over a weighted-average period of 3.4 years.

### Restricted Stock Awards

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31, 2018</th>
<th>2019 (unaudited)</th>
<th>Three Months Ended March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Shares</td>
<td>Weighted-Average Grant Date Fair Value</td>
<td>Shares</td>
</tr>
<tr>
<td>Unvested balance, beginning of period</td>
<td>110</td>
<td>$ 0.91</td>
<td>1,127</td>
</tr>
<tr>
<td>Issued</td>
<td>1,064</td>
<td>1.88</td>
<td>—</td>
</tr>
<tr>
<td>Vested</td>
<td>(47)</td>
<td>0.83</td>
<td>(373)</td>
</tr>
<tr>
<td>Cancelled</td>
<td>—</td>
<td>(754)</td>
<td>1.88</td>
</tr>
<tr>
<td>Unvested balance, end of period</td>
<td>1,127</td>
<td>1.83</td>
<td>—</td>
</tr>
</tbody>
</table>

In August 2017, we issued restricted stock awards to two executives. The grant date fair value of these restricted stock awards was $2.0 million. During the year ended December 31, 2018, 753,546 shares of the restricted stock awards were subsequently cancelled. In January 2019, we issued 982,301 shares of restricted stock awards to an executive with a grant date fair value of $9.6 million.

During the years ended December 31, 2017 and 2018 and the three months ended March 31, 2018 and 2019 (unaudited), we recorded stock-based compensation expense of $0.2 million, $0.6 million, $0.2 million, and $0.2 million, respectively. As of March 31, 2019 (unaudited), the unrecognized stock-based compensation expense related to these restricted stock awards was $9.4 million, which was expected to be recognized over a weighted-average period of 3.4 years.

### Restricted Stock Units

During the year ended December 31, 2018 and the three months ended March 31, 2019 (unaudited), we granted restricted stock units that contain both service- and performance-based vesting conditions to our executives, employees and consultants (“Performance RSUs”). The service-based vesting condition is generally satisfied (i) over four years with 25% vesting on the one-year anniversary of the award and the remainder vesting...
monthly over the next 36 months, or (2) over four years with 1/48 vesting on the one-month anniversary of the award, and remainder vesting monthly over the next 47 months, subject to the grantee’s continued service. The performance-based vesting condition is satisfied upon the earlier of (i) a change in control where the consideration paid to our equity securityholders is cash, publicly traded stock, or a combination of both, or (ii) six months and one day following our planned IPO. The satisfaction of the performance-based vesting condition is expected to become probable upon the completion of a planned IPO, at which point we will record cumulative stock-based compensation expense using the accelerated attribution method.

<table>
<thead>
<tr>
<th>Restricted Stock Units and Performance RSUs</th>
<th>Weighted-Average Grant Date Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands, except per share data)</td>
<td></td>
</tr>
<tr>
<td>Balance as of December 31, 2017</td>
<td></td>
</tr>
<tr>
<td>Granted</td>
<td>1,830</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(3)</td>
</tr>
<tr>
<td>Balance as of December 31, 2018</td>
<td>1,827</td>
</tr>
<tr>
<td>Granted (unaudited)</td>
<td>2,363</td>
</tr>
<tr>
<td>Vested (unaudited)</td>
<td>(491)</td>
</tr>
<tr>
<td>Forfeited (unaudited)</td>
<td>(9)</td>
</tr>
<tr>
<td>Balance as of March 31, 2019 (unaudited)</td>
<td>3,690</td>
</tr>
</tbody>
</table>

As of December 31, 2018, there was no stock-based compensation expense related to the Performance RSUs because the performance vesting condition was not deemed probable of occurring.

In January 2019, we granted 982,301 restricted stock units to an executive that contain only service-based vesting conditions over a four year period and recognized stock-based compensation expense of $0.4 million during the three months ended March 31, 2019 (unaudited). In addition, we granted 491,151 restricted stock units that immediately vested on the grant date and recognized $3.8 million of stock-based compensation expense in our consolidated statements of operations for the three months ended March 31, 2019 (unaudited).

Secondary Transactions

In December 2017, certain of our employees and stockholders sold 605,345 shares of our common stock at a price of $1.88 per share to investors, which was the fair value of our common stock at the time of the transaction. We did not sell any shares or receive any proceeds from the transaction.

In December 2018, certain of our employees and stockholders sold 2,138,302 shares of our common stock and 57,945 shares of our redeemable convertible preferred stock at a price of $7.4672 per share to investors. The purchase price per share in the secondary transaction was in excess of the fair value of our outstanding common stock at the time of the transaction and accordingly, upon the completion of the transaction, we recorded $2.3 million in stock-based compensation expense related to the excess of the sales price per share of common stock over the fair value of the our common stock at the time of the transaction. We did not sell any shares or receive any proceeds from the transaction.

Award Modifications

During the year ended December 31, 2018, our board of directors approved three modifications to outstanding restricted stock awards granted under the 2014 Plan, one to a nonemployee and two to participants.
providing services to us as of that date. One modification was to a nonemployee to immediately vest 23,363 shares of restricted stock awards in September 2018, resulting in additional stock-based compensation expense of $0.1 million that was recognized in the consolidated statements of operations during the year ended December 31, 2018. The other two modifications were related to the cancellation of 753,546 shares of restricted stock awards and replacement with 376,772 shares of our Performance RSUs. Until the performance-based vesting condition for these Performance RSUs are satisfied, we continue to recognize stock-based compensation expense based on the remaining amount stock-based compensation expense measured for the original awards.

Stock-Based Compensation Expense

Stock-based compensation expense in the consolidated statements of operations is summarized as follows:

<table>
<thead>
<tr>
<th>Year Ended December 31, 2017</th>
<th>Year Ended December 31, 2018</th>
<th>Three Months Ended March 31, (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Research and development expenses</td>
<td>541</td>
<td>2,188</td>
</tr>
<tr>
<td>Sales and marketing expenses</td>
<td>413</td>
<td>916</td>
</tr>
<tr>
<td>General and administrative expenses</td>
<td>1,164</td>
<td>3,210</td>
</tr>
<tr>
<td>Total stock-based compensation expense</td>
<td>$2,118</td>
<td>$6,332</td>
</tr>
</tbody>
</table>

We capitalized less than $0.1 million and $0.2 million of stock-based compensation costs related to capitalized internal-use software during the years ended December 31, 2017 and 2018, respectively, and less than $0.1 million for each of the three months ended March 31, 2018 and 2019 (unaudited).

11. Income Taxes

We recorded an income tax benefit of $0.1 million and a provision of less than $0.1 million during the years ended December 31, 2017 and 2018, respectively. The income tax provision for the years ended December 31, 2017 and 2018 was primarily due to state and foreign income tax expense and federal benefit related to release of valuation allowance upon acquired deferred tax liabilities. During the three months ended March 31, 2019 (unaudited), our benefit from income taxes was $1.4 million as a result of the release of a valuation allowance arising from a deferred tax liability in connection with the myStrength acquisition. The deferred tax liability provided on additional source of taxable income to support the realizability of pre-existing deferred tax assets.

Loss before provision for income taxes consisted of the following:

<table>
<thead>
<tr>
<th>Year Ended December 31, 2017</th>
<th>Year Ended December 31, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
<td></td>
</tr>
<tr>
<td>Domestic</td>
<td>$ (16,939)</td>
</tr>
<tr>
<td>Foreign</td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td>$ (16,919)</td>
</tr>
</tbody>
</table>
Our provision for (benefit from) income taxes consisted of the following:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2017</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(in thousands)</td>
</tr>
<tr>
<td><strong>Current:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. Federal</td>
<td></td>
<td>$ —</td>
</tr>
<tr>
<td>State</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Foreign</td>
<td></td>
<td>6</td>
</tr>
<tr>
<td><strong>Total current</strong></td>
<td></td>
<td>$ 8</td>
</tr>
<tr>
<td><strong>Deferred:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. Federal</td>
<td></td>
<td>$ (61)</td>
</tr>
<tr>
<td>State</td>
<td></td>
<td>(8)</td>
</tr>
<tr>
<td>Foreign</td>
<td></td>
<td>—</td>
</tr>
<tr>
<td><strong>Total deferred</strong></td>
<td></td>
<td>$ (69)</td>
</tr>
<tr>
<td><strong>Total provision for (benefit from) income taxes</strong></td>
<td></td>
<td>$ (61)</td>
</tr>
</tbody>
</table>

The reconciliation of federal statutory income tax rate to our effective income tax rates is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Expected income tax benefit at the federal statutory rate</td>
<td>34.00%</td>
</tr>
<tr>
<td>State taxes, net of federal benefit</td>
<td>0.04%</td>
</tr>
<tr>
<td>Foreign income (losses) taxed at different rates</td>
<td>—</td>
</tr>
<tr>
<td>Research and development credit, net</td>
<td>3.56%</td>
</tr>
<tr>
<td>Tax Cuts and Jobs Act revaluation</td>
<td>(57.00)%</td>
</tr>
<tr>
<td>Non-deductible items</td>
<td>(1.15)%</td>
</tr>
<tr>
<td>Stock-based compensation</td>
<td>1.90%</td>
</tr>
<tr>
<td>Other</td>
<td>(0.85)%</td>
</tr>
<tr>
<td>Change in valuation allowance</td>
<td>19.86%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>0.36%</td>
</tr>
</tbody>
</table>

Deferred tax assets are recognized for the expected future tax consequences of temporary differences between the carrying amounts and the tax basis of assets and liabilities. Management assesses whether it is more likely than not that some portion or all of the deferred tax assets will be realized. Deferred tax assets are reduced by valuation allowance to the extent management believes it is not more likely than not to be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income. Management makes estimates and judgements about future taxable income based on assumptions that are consistent with our plans and estimates.
Significant components of our deferred tax assets are summarized as follows:

<table>
<thead>
<tr>
<th>Deferred tax assets:</th>
<th>Year Ended December 31,</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017 (in thousands)</td>
<td>2018</td>
</tr>
<tr>
<td>Federal and state net operating loss carryforwards</td>
<td>$ 15,307</td>
<td>$ 31,508</td>
</tr>
<tr>
<td>Research and development tax credits</td>
<td>2,127</td>
<td>3,794</td>
</tr>
<tr>
<td>Stock-based compensation</td>
<td>585</td>
<td>2,055</td>
</tr>
<tr>
<td>Accruals and reserves</td>
<td>405</td>
<td>1,009</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>1,286</td>
<td>2,487</td>
</tr>
<tr>
<td>Other</td>
<td>71</td>
<td>230</td>
</tr>
<tr>
<td>Gross deferred tax assets</td>
<td>19,781</td>
<td>41,083</td>
</tr>
<tr>
<td>Valuation allowance</td>
<td>(19,302)</td>
<td>(38,310)</td>
</tr>
<tr>
<td>Net deferred tax assets</td>
<td>$ 479</td>
<td>$ 2,773</td>
</tr>
</tbody>
</table>

Deferred tax liabilities:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017 (in thousands)</td>
</tr>
<tr>
<td>Property and equipment</td>
<td>(436)</td>
</tr>
<tr>
<td>Intangible assets</td>
<td>(43)</td>
</tr>
<tr>
<td>Net deferred tax assets</td>
<td>$ —</td>
</tr>
</tbody>
</table>

Due to the uncertainties surrounding the realization of deferred tax assets through future taxable income, we have provided a full valuation allowance, and therefore no benefit has been recognized for the net operating loss carryforwards and other deferred tax assets. The valuation allowance decreased by $1.4 million and increased by $19.0 million during the years ended December 31, 2017 and 2018, respectively. We maintain a full valuation allowance against the net federal and state deferred tax assets as it is not more likely than not that the assets will be realized based on our history of losses. During the year ended December 31, 2018, no tax benefits were recorded related to stock-based compensation.

As of December 31, 2017 and 2018, we had net operating loss carryforwards and tax credit carryforwards as follows:

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>2017 (in thousands)</th>
<th>2018 (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net operating losses, federal</td>
<td>$ 66,906</td>
<td>$ 122,824</td>
</tr>
<tr>
<td>Net operating losses, California</td>
<td>3,144</td>
<td>6,251</td>
</tr>
<tr>
<td>Net operating losses, other states</td>
<td>11,396</td>
<td>57,494</td>
</tr>
<tr>
<td>Tax credits, federal</td>
<td>2,070</td>
<td>3,312</td>
</tr>
<tr>
<td>Tax credits, state</td>
<td>1,292</td>
<td>2,273</td>
</tr>
<tr>
<td>Total</td>
<td>$ 84,808</td>
<td>$ 192,154</td>
</tr>
</tbody>
</table>

As of December 31, 2018, we had $122.8 million of federal and $63.7 million of state net operating loss carryforwards available to offset future taxable income. Such carryforwards expire in varying amounts beginning in 2028.

As of December 31, 2018, we had $3.3 million of federal research credits and $2.2 million of state research credits available to offset future tax liabilities. The federal credit carryforwards expire beginning in 2034. The state credits do not expire.

Our ability to utilize net operating losses in the future may be subject to substantial restriction in the event of past or future ownership changes as defined in Section 382 of the Internal Revenue Code of 1986, as amended.
In the event we should experience an ownership change, as defined, utilization of our net operating loss carryforwards and credits may be subject to a substantial annual limitation. The annual limitation may result in the expiration of net operating losses and credits before utilization.

We have no present intention of remitting undistributed earnings of foreign subsidiaries and, accordingly, no deferred tax liability has been established related to these earnings.

**Uncertain Tax Positions**

A reconciliation of the beginning and ending balances of the unrecognized tax benefits during the years ended December 31, 2017 and 2018 is presented below:

<table>
<thead>
<tr>
<th>Year Ended December 31, 2017 (in thousands)</th>
<th></th>
<th>Year Ended December 31, 2018 (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrecognized benefit—beginning of year</td>
<td>$—</td>
<td>$1,235</td>
</tr>
<tr>
<td>Gross increases—current year tax positions</td>
<td>337</td>
<td>556</td>
</tr>
<tr>
<td>Gross increases—prior year tax positions</td>
<td>898</td>
<td>—</td>
</tr>
<tr>
<td>Decreases—prior year tax positions</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Unrecognized benefit—end of year</td>
<td>$1,235</td>
<td>$1,791</td>
</tr>
</tbody>
</table>

As of December 31, 2018, we recorded no liability related to uncertain tax positions on the financial statements. Our policy is to include interest and penalties related to unrecognized tax benefits as a component of other income, net.

We file federal, state, and foreign income tax returns in the U.S. and abroad. For U.S. federal and state income tax purposes, the statute of limitations currently remains open for all years due to our NOL carryforwards. We are not currently under examination in any jurisdiction.

On December 22, 2017, the Tax Cuts and Jobs Act (“TCJA”) was signed into law making significant changes to the Code. Changes include, but are not limited to, a U.S. corporate income tax rate (“U.S. federal tax rate”) decrease to 21% effective January 1, 2018. As a result of the decrease in the U.S. federal tax rate to 21% effective January 1, 2018, we remeasured our deferred tax assets and liabilities using the U.S. federal tax rate that will apply when the related temporary differences are expected to reverse. Accordingly, this change in tax rate resulted in a reduction in our U.S. deferred tax assets by $9.7 million in 2017, which was fully offset by a corresponding reduction in valuation allowance.

Other provisions of the TCJA include one-time transition tax on the mandatory deemed repatriation of cumulative foreign earnings. The one-time repatriation tax is based on the post-1986 earnings and profits that were previously deferred from U.S. income taxes. Due to its minimal foreign earnings and net operating loss carryforwards the one-time repatriation tax did not result in additional income tax expense.
### 12. Net Loss Per Share Attributable to Common Stockholders

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

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>Net loss</td>
<td>(16,858)</td>
<td>(33,382)</td>
</tr>
<tr>
<td>Accretion of redeemable convertible preferred stock</td>
<td>(143)</td>
<td>(162)</td>
</tr>
<tr>
<td>Net loss attributable to common stockholders</td>
<td>(17,001)</td>
<td>(33,544)</td>
</tr>
<tr>
<td>Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted</td>
<td>14,442</td>
<td>16,573</td>
</tr>
<tr>
<td>Net loss per share attributable to common stockholders, basic and diluted</td>
<td>(1.18)</td>
<td>(2.02)</td>
</tr>
</tbody>
</table>

As we have reported net loss for each of the periods presented, all potentially dilutive securities are antidilutive. The following potential outstanding shares of common stock were excluded from the computation of diluted net loss per share attributable to common stockholders for the periods presented because including them would have been antidilutive:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>Redeemable convertible preferred stock</td>
<td>45,960</td>
<td>58,615</td>
</tr>
<tr>
<td>Stock options</td>
<td>15,628</td>
<td>17,571</td>
</tr>
<tr>
<td>Restricted stock awards subject to repurchase</td>
<td>1,127</td>
<td>—</td>
</tr>
<tr>
<td>Common stock warrants</td>
<td>785</td>
<td>785</td>
</tr>
<tr>
<td>Restricted stock units</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>63,500</td>
<td>76,971</td>
</tr>
</tbody>
</table>

The table above does not include 1,826,667 Performance RSUs outstanding as of December 31, 2018 and 2,707,942 restricted stock units outstanding as of March 31, 2019 (unaudited), as these Performance RSUs and restricted stock units were subject to either performance-based or market-based vesting conditions that were not met as of those dates.

### Unaudited Pro Forma Net Loss Per Share Attributable to Common Stockholders

Unaudited pro forma basic and diluted net loss per share attributable to common stockholders for the year ended December 31, 2018 and for the three months ended March 31, 2019 has been computed to give effect to the conversion of redeemable convertible preferred stock into common stock as of the beginning of the period presented or the date of issuance, if later, and the weighted-average shares of Performance RSUs that have satisfied the service-based vesting condition as of December 31, 2018 and March 31, 2019 and will vest upon the satisfaction of the performance-based condition in connection with the IPO.
The following table sets forth the computation of the unaudited pro forma basic and diluted net loss per share:

<table>
<thead>
<tr>
<th>Numerator:</th>
<th>Year Ended December 31, 2018</th>
<th>Three Months Ended March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands, except per share data)</td>
<td></td>
</tr>
<tr>
<td>Net loss attributable to common stockholders</td>
<td>$ (33,544)</td>
<td>$ (15,001)</td>
</tr>
<tr>
<td>Reversal of accretion of redeemable convertible preferred stock</td>
<td>162</td>
<td>41</td>
</tr>
<tr>
<td>Pro forma net loss attributable to common stockholders</td>
<td>$ (33,382)</td>
<td>$ (14,960)</td>
</tr>
</tbody>
</table>

| Denominator: | | |
|--------------| | |
| Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted | 16,573 | 18,207 |
| Pro forma adjustment to reflect conversion of redeemable convertible preferred stock | 55,183 | 58,615 |
| Pro forma adjustment to reflect vesting of Performance RSUs | 1 | 56 |
| Weighted-average shares used in computing pro forma net loss per share, basic and diluted | 71,757 | 76,878 |
| Pro forma net loss per share, basic and diluted | $ (0.47) | $ (0.19) |

13. Segment Information

We operate as one operating segment as we only report financial information on an aggregate and consolidated basis to the Chief Executive Officer, our chief operating decision maker, who regularly reviews financial operating results on a consolidated basis for purposes of allocating resources and evaluating financial performance. There are no segment managers who are held accountable for operations, operating results, and plans for components or types of products or services below the consolidated unit level. As of December 31, 2017, December 31, 2018, and March 31, 2019 (unaudited), substantially all of our long-lived assets were located in the United States and all revenue was earned in the United States.

14. Related Party Transactions

During the years ended December 31, 2017 and 2018, we paid shared service fees related to financial, legal, and administrative support to a stockholder pursuant to a shared services agreement, in the amount of $0.3 million and less than $0.1 million, respectively. Fees paid during the three months ended March 31, 2018 (unaudited) totaled less than $0.1 million. No such fees were paid under this arrangement during the three months ended March 31, 2019 (unaudited).

Pursuant to an employment arrangement, we paid the managing partner of a stockholder a salary totaling $0.2 million and $0.1 million during the years ended December 31, 2017 and 2018, respectively, and salary totaling less than $0.1 million during the three months ended March 31, 2018 (unaudited). No such fees were paid during the three months ended March 31, 2019 (unaudited).

In 2014, we entered into a sublease agreement with a stockholder for office space from which our Chicago office operates. Rent expense was allocated to us based on space used. The sublease term totaled five years, which equaled the term of the underlying lease agreement. Rent expense incurred during the year ended December 31, 2017 under this sublease totaled $0.1 million. In March 2017, the master lease agreement was transferred to us and the stockholder subleased from us. Sublease income recorded for this sublease was less than $0.1 million during each of the years ended December 31, 2017 and 2018 and the three months ended March 31, 2018 and 2019 (unaudited).
During the three months ended March 31, 2019 (unaudited), we assumed a lease agreement previously held by a stockholder for our Chicago office space. The lease term expires in December 2024. Subsequently, we entered into a sublease agreement with the stockholder for a portion of the leased space. The sublease terms are the same as the terms of the underlying lease agreement. During the three months ended March 31, 2019 (unaudited), sublease income totaled less than $0.1 million. During the three months ended March 31, 2019 (unaudited), we also reimbursed the lessee for certain leasehold improvement and/or furniture costs totaling $0.2 million.

15. Employee Benefits

We sponsor a 401(k) plan for employees, which provides for us to make discretionary matching or discretionary annual contributions to the plan. We made no contributions to the plan during the years ended December 31, 2017 and 2018. During the three months ended March 31, 2019 (unaudited), we recorded expense of $0.4 million related to our 401(k) plan.

16. Subsequent Events

We have evaluated subsequent events through May 10, 2019, the date our consolidated financial statements were available for issuance, and with respect to the reverse stock split discussed below, through June 28, 2019.

In February 2019, we acquired all of the issued and outstanding shares of myStrength, Inc. (“myStrength”) and assumed most of myStrength’s employees. myStrength is a privately-held, Colorado-based digital behavioral health company that offers digital tools for conditions such as depression and addiction. Upon the closing of this acquisition, we paid cash consideration of $30.1 million, subject to any post-closing working capital adjustments. In addition, as part of the purchase agreement for myStrength, we are obligated to pay an earn-out consideration of up to $5.0 million contingent upon satisfying future milestones for the year ending December 31, 2019. We are continuing to assess the impact of this acquisition on our consolidated financial statements. The initial accounting for the business combination is incomplete at the time of this filing. Therefore, we did not provide all the disclosures required for a business combination pursuant to ASC 805, Business Combinations, and we will provide applicable disclosures in a future filing.

In February 2019, we assumed a lease obligation from a stockholder for office space from which our Chicago office operates. The total future lease obligation is $0.9 million, net of sublease income of $0.2 million. The associated lease term ends in December 2024.

Subsequent to December 31, 2018, we issued 3,261,427 Performance RSUs, 161,250 restricted stock units with service- and market-based vesting conditions, and 982,301 restricted stock awards.

In June 2019, our board of directors and stockholders approved a 1-for-2 reverse stock split of our common stock and redeemable convertible preferred stock, which was effected on June 27, 2019 pursuant to an amendment to our amended and restated certificate of incorporation. The par value of the common stock and redeemable convertible preferred stock was not adjusted as a result of the reverse stock split. All references to redeemable convertible preferred stock, common stock, options to purchase common stock, restricted stock awards, restricted stock units, common stock warrants, per share data, and related information included in the accompanying consolidated financial statements have been adjusted to reflect this reverse stock split for all periods presented.

17. Subsequent Events (unaudited)

In preparing the unaudited interim consolidated financial statements as of and for the three months ended March 31, 2019, we have evaluated subsequent events through June 14, 2019, the date the unaudited interim consolidated financial statements were available for issuance, and with respect to the reverse stock split discussed below, through June 28, 2019.
In June 2019, we entered into an amendment to the lease agreement for our Mountain View office. The amendment makes changes to the original lease including (i) the addition of approximately 16,100 square feet of office space and (ii) an extension of our current lease term. The total future lease obligation is $11.3 million over the new lease term ending in January 2024.

Subsequent to March 31, 2019, we issued 1,015,200 Performance RSUs that contain both service- and performance-based vesting conditions, as described in Note 10. We also issued 100,000 restricted stock units with service- and other performance-based vesting conditions. The service-based vesting condition will be satisfied over four years. The performance-based vesting condition is satisfied upon both the achievement of certain sales milestones and the earlier of (i) the effective date of our IPO or (ii) a change in control. We also issued 225,000 restricted stock units with only service-based vesting conditions, which will be satisfied in quarterly installments through May 25, 2021.

In June 2019, our board of directors and stockholders approved a 1-for-2 reverse stock split of our common stock and redeemable convertible preferred stock, which was effected on June 27, 2019 pursuant to an amendment to our amended and restated certificate of incorporation. The par value of the common stock and redeemable convertible preferred stock was not adjusted as a result of the reverse stock split. All references to redeemable convertible preferred stock, common stock, options to purchase common stock, restricted stock awards, restricted stock units, common stock warrants, per share data, and related information included in the accompanying consolidated financial statements have been adjusted to reflect this reverse stock split for all periods presented.

**Events Subsequent to Original Issuance of Consolidated Financial Statements (unaudited)**

In June 2019, we amended an executive’s restricted stock award agreement, originally executed in March 2019 covering 982,301 shares of our common stock. The amendment (i) revised the forfeiture provision such that in the event that the executive ceases providing services to us as a result of his termination with cause prior to February 2020, then any vested shares as of such date will be forfeited immediately and (ii) removed our and certain preferred investors’ repurchase option for any vested restricted stock awards. We are currently evaluating the impact of this modification on our consolidated financial statements.
INDEPENDENT AUDITOR’S REPORT

To the Board of Directors and Stockholders of Retrofit, Inc.

We have audited the accompanying financial statements of Retrofit, Inc. (a Delaware corporation), which comprise the balance sheet as of April 15, 2018, and the related statements of operations, changes in stockholders’ equity, and cash flows for the period January 1, 2018 to April 15, 2018, and the related notes to the financial statements.

Management’s Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor’s Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor’s judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity’s preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity’s internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Retrofit, Inc. as of April 15, 2018, and the results of its operations and its cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America.

Substantial Doubt about the Company’s Ability to Continue as a Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 7 to the financial statements, the Company’s significant operating losses raise substantial doubt about its ability to continue as a going concern. Management’s evaluation of the events and conditions and management’s plans regarding those matters are also described in Note 7. The financial statements do not include any adjustments that might result from the outcome of this uncertainty. Our opinion is not modified with respect to that matter.

/s/ CJBS, LLC
Northbrook, IL
April 26, 2019

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# RETROFIT, INC.
## BALANCE SHEET
### APRIL 15, 2018

### ASSETS

#### CURRENT ASSETS
- Cash $87,368
- Accounts receivable, net 530,254
- Inventory 40,415
- Prepaid expenses 106,492
- Security deposits 18,000

**Total current assets** 782,529

#### NON-CURRENT ASSETS
- Property and equipment, net 51,875
- Intangible assets, net 542,293

**Total non-current assets** 594,168

**TOTAL ASSETS** $1,376,697

### LIABILITIES AND STOCKHOLDERS' EQUITY

#### CURRENT LIABILITIES
- Accounts payable and accrued expenses $671,928
- Deferred revenue 276,059
- Convertible notes 2,120,434
- Derivative liabilities 2,580,443

**Total current liabilities** 5,648,864

#### STOCKHOLDERS' EQUITY (DEFICIT)

- Preferred stock, series AA, $0.0001 par value, 5,986,883 shares authorized 4,365,500 shares issued and outstanding; (liquidation at original issue price per share adjusted for capitalization events plus declared or undeclared and unpaid dividends) 436
  - Preferred stock, series AA-1, $0.0001 par value, 6,097,127 shares authorized 3,738,727 shares issued and outstanding; (liquidation at 2.0 of the original issue price per share adjusted for capitalization events plus declared and unpaid dividends or, if greater, the amount per share as would have been payable had such share been converted into common shares immediately prior liquidation event) 374
- Common stock, $0.0001 par value, 16,050,000 shares authorized; 1,853,122 shares issued and outstanding 185
- Additional paid in capital, net of issuance costs 27,402,852
- Accumulated deficit (31,676,014)

**Total stockholders' equity (deficit)** $(4,272,167)

**TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY** $1,376,697

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*The accompanying notes are an integral part of these financial statements.*
# RETROFIT, INC.
## STATEMENT OF OPERATIONS
### FOR THE PERIOD JANUARY 01, 2018 TO APRIL 15, 2018

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>REVENUES</strong></td>
<td>$1,508,170</td>
</tr>
<tr>
<td><strong>COST OF SALES</strong></td>
<td></td>
</tr>
<tr>
<td>Wellness experts</td>
<td>585,572</td>
</tr>
<tr>
<td>Fitness devices related costs</td>
<td>343,090</td>
</tr>
<tr>
<td>Revenue sharing costs</td>
<td>68,582</td>
</tr>
<tr>
<td>Other variable selling costs</td>
<td>3,127</td>
</tr>
<tr>
<td><strong>Total cost of sales</strong></td>
<td>1,000,371</td>
</tr>
<tr>
<td><strong>GROSS MARGIN</strong></td>
<td>507,799</td>
</tr>
<tr>
<td><strong>SELLING, GENERAL AND ADMINISTRATIVE EXPENSES</strong></td>
<td></td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(1,095,983)</td>
</tr>
<tr>
<td><strong>OTHER INCOME (EXPENSES)</strong></td>
<td></td>
</tr>
<tr>
<td>Interest expense</td>
<td>(201,685)</td>
</tr>
<tr>
<td>Change in fair value—derivatives</td>
<td>(1,392,275)</td>
</tr>
<tr>
<td><strong>Net, other income (expenses)</strong></td>
<td>(1,593,960)</td>
</tr>
<tr>
<td><strong>LOSS BEFORE INCOME TAXES</strong></td>
<td>(2,689,943)</td>
</tr>
<tr>
<td><strong>INCOME TAX EXPENSE (BENEFIT)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>NET (LOSS)</strong></td>
<td>($2,689,943)</td>
</tr>
</tbody>
</table>

*The accompanying notes are an integral part of these financial statements.*

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Table of Contents

RETROFIT, INC.
STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY
FOR THE PERIOD JANUARY 01, 2018 TO APRIL 15, 2018

<table>
<thead>
<tr>
<th></th>
<th>Common stock</th>
<th>Preferred stock</th>
<th>Additional paid-in capital</th>
<th>Additional paid-in stock options</th>
<th>Accumulated deficit</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at January 1, 2018</td>
<td>$ 185</td>
<td>$ 810</td>
<td>$27,272,713</td>
<td>$ 130,326</td>
<td>$(28,986,071)</td>
<td>$(1,582,037)</td>
</tr>
<tr>
<td>Stock based compensation</td>
<td>—</td>
<td>—</td>
<td>130,326</td>
<td>(130,326)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Syndication costs</td>
<td>—</td>
<td>—</td>
<td>(187)</td>
<td>—</td>
<td>—</td>
<td>(187)</td>
</tr>
<tr>
<td>Net loss</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(2,689,943)</td>
<td>—</td>
<td>(2,689,943)</td>
</tr>
<tr>
<td>Balance at April 15, 2018</td>
<td>$ 185</td>
<td>$ 810</td>
<td>$27,402,852</td>
<td>—</td>
<td>$(31,676,014)</td>
<td>$(4,272,167)</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these financial statements.

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CASH FLOWS FROM OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net (loss)</td>
<td>($2,689,943)</td>
</tr>
<tr>
<td>Adjustments to reconcile net loss to net cash</td>
<td></td>
</tr>
<tr>
<td>Provided by (used in) operating activities:</td>
<td></td>
</tr>
<tr>
<td>Depreciation</td>
<td>7,305</td>
</tr>
<tr>
<td>Amortization</td>
<td>47,430</td>
</tr>
<tr>
<td>Syndication costs</td>
<td>(187)</td>
</tr>
<tr>
<td>Amortization of discount on convertible notes</td>
<td>154,014</td>
</tr>
<tr>
<td>Change in fair value of derivative liabilities</td>
<td>1,392,275</td>
</tr>
<tr>
<td>(Increased) decrease in assets</td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>59,889</td>
</tr>
<tr>
<td>Inventory</td>
<td>94,912</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>(35,574)</td>
</tr>
<tr>
<td>Increased (decrease) in liabilities</td>
<td></td>
</tr>
<tr>
<td>Accounts payable and accrued</td>
<td>170,922</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>(132,033)</td>
</tr>
<tr>
<td>Net cash (used in) operating activities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(930,990)</td>
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</table>

CASH FLOWS FROM INVESTING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchases of property and equipment expenses</td>
<td>(7,702)</td>
</tr>
<tr>
<td>Capitalized costs intangible assets</td>
<td>(36,456)</td>
</tr>
<tr>
<td>Net cash (used in) investing activities</td>
<td>(44,158)</td>
</tr>
</tbody>
</table>

CASH FLOWS FROM FINANCING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceeds from convertible notes</td>
<td>620,000</td>
</tr>
<tr>
<td>Net cash provided by financing activities</td>
<td>620,000</td>
</tr>
</tbody>
</table>

NET CHANGE IN CASH

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net change in cash</td>
<td>($355,148)</td>
</tr>
<tr>
<td>CASH—BEGINNING OF YEAR</td>
<td>442,516</td>
</tr>
<tr>
<td>CASH—END OF YEAR</td>
<td>$ 87,368</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these financial statements.

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1. DESCRIPTION OF THE ORGANIZATION

Retrofit Inc., (“Retrofit” or the “Company”) a Delaware corporation since 2011, provides a full suite of personalized, tech-enabled weight-management and disease-prevention solutions that deliver weight loss outcomes and lasting results. Retrofit expert nutritionists, exercise physiologists, and behavior coaches help individuals and corporate employees address underlying behavioral issues, and close the gap between what they know and what they do, to help them lose weight and live a healthy life they love.

Retrofit solutions are powered by a smart technology platform, a proprietary 6-factor lifestyle assessment, real-time data insights and delivered by multi-disciplinary expert coaches.

Retrofit uses a recurring revenue model, signing multi-year contracts with employers, health plans and distribution partners. Retrofit’s solutions are reimbursable under healthcare insurance.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Accounting—The accompanying financial statements have been prepared on the accrual basis of accounting, under which revenue is recognized when earned and expenses are recorded when incurred, in accordance with generally accepted accounting principles in the United States of America (“GAAP”). The accompanying financial statements have been prepared assuming that the Company will continue its operations.

In November 2015, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update 2015-17 (ASU 2015-17), Balance Sheet Classification of Deferred Taxes. The amendments in this update require that deferred tax liabilities and assets be classified as non-current in a classified balance sheet. ASU 2015-17 is effective for calendar year 2019 with early implementation permitted and has been adopted by the Company in 2016.

Use of Estimates—The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results could differ from those estimates.

Cash and Concentration of Credit Risk—The cash balance as of April 15, 2018, consists of checking and savings accounts. Financial instruments that potentially subject Retrofit to a concentration of credit risk consists principally of cash. Retrofit places its cash and deposits with high credit quality financial institutions; however, deposits may exceed the federally insured limits from time to time.

Accounts Receivable—Accounts receivable are for trade receivables arising from the sales of weight-management and disease-prevention solutions to clients and are stated at the amount management expects to collect from outstanding balances. Management provides for probable uncollectible amounts through a charge to earnings and a credit to a valuation allowance based on its assessment of the current status of individual accounts. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to trade accounts receivable. At April 15, 2018, the allowance for doubtful accounts was $58,000.

Prepaid Expenses and Other Assets—Prepaid expenses consist of prepayments for annual insurance premiums. The insurance premium is amortized on a straight-line basis over the life of the underlying policy.

Inventory—Retrofit purchase small fitness devices, Fitbit and scales, that are used by customers enrolled in one of Retrofit’s weight loss program. Fitness devices are expensed at the time of shipment. Inventory is stated at the lower of cost or net realizable value, and the cost is determined by the moving average method.
Bill and Hold—GAAP specifies certain criteria which must be met to allow “bill and hold” transactions to be recorded as revenue when delivery has not occurred: the risk of ownership must have passed to the buyer, the customer must have made a fixed commitment to purchase the goods and must request that the transaction be on a bill and hold basis, there must be a fixed schedule for delivery of the goods, the ordered goods must have been segregated from the seller's inventory and not be subject to being used to fill other orders, and the products must be complete and ready for shipment. For the period ended April 15, 2018, the management determined that all the criteria have been met and, the Company recorded the sale and related cost of goods sold before the delivery of products under one bill and hold contract. As of April 15, 2018, the liability for unfulfilled inventory obligation under the bill and hold transactions recorded in the balance sheet was $6,199.

Intangible Assets—Intangible assets consists of an internal developed healthy living product launched in 2017 and internally developed software. The internal developed healthy living product was launched in 2017 and includes capitalized costs totaling $350,176. The internal developed software includes capitalized costs through April 15, 2018, totaling $327,091. The intangible assets are amortized on a straight-line basis over the useful life of three years. Amortization expense for the period ended April 15, 2018 was $47,430.

Property and Equipment—Property and equipment acquisitions are carried at cost less accumulated depreciation. Depreciation is recorded on a straight-line basis over the estimated useful lives of the assets ranging from 3 to 5 years. The cost of repairs and maintenance that do not improve or extend the useful lives of the respective assets is charged to expense as incurred; significant renewals and betterments are capitalized.

Security Deposit—As of April 15, 2018, Retrofit has $18,000 into a security deposit related to an operating lease for the use of office space.

Accounts Payable and Accrued Expenses—Included in accounts payable and accrued expenses were obligations to pay vendors for goods and services received in the normal course of business.

Deferred Revenue—Deferred revenue is recorded when payments are received in advance of performing service obligations and is recognized over the service period. Advances under contract revenue are recorded as deferred revenue.

Common Stock—As of April 15, 2018, Retrofit had 1,853,122 shares of Common Stock issued and outstanding and 16,050,000, $0.0001 par value per share authorized shares of Common Stock. The holders of Common Stock are entitled to one vote for each share of Common Stock. The holders of Common Stock are entitled to receive, when declared by the board of directors, dividends after payments of Preferred Stock dividends.

Preferred Stock—As of April 15, 2018, Retrofit had 12,084,010, $0.0001 par value per share, authorized shares of Preferred Stock designated as follows: 5,986,883 authorized shares of Series AA Preferred Stock and 6,097,127 authorized shares of Series AA-1 Preferred Stock. Holders of Series AA Preferred Stock, prior and in preference to any Common Stock or series AA-1 Preferred Stock, are entitled to receive cumulative dividends, at a rate of 8% per annum, payable upon liquidation, as defined on the amended article of incorporation. Series AA dividends accrue from day to day whether or not declared. Annual cumulative dividends will not accrue on the Series AA-1 Preferred Stock. As of April 15, 2018, there were no declared dividends. Total accrued cumulative undeclared dividends for series AA preferred shares as of April 15, 2018, totaled $855,157.

Series AA and AA-1 Preferred Stock can be converted into the number of fully paid shares of Common Stock at an initial conversion ratio of 1:1, subject to adjustments for stock dividends, splits, combinations and similar events.

The Board of Directors of the Company is authorized to issue Preferred Stock from time to time in one or more classes or series thereof, each such class or series to have such voting powers (if any), conversion rights (if
any), designations, preferences and relative, participating, optional or other special rights, and such qualifications, limitations or restrictions thereof as shall be determined by the Board of Directors and stated and expressed in a resolution or resolutions thereof providing for the issuance of such Preferred Stock.

Subsequent period ending April 15, 2018, on April 16, 2018, Retrofit’s issued and outstanding shares were canceled. The accrued undeclared dividends on series AA shares were canceled. See Note 13 for additional details.

Stock Options and Warrants—Retrofit accounts for employee and non-employee stock options under the fair value method of accounting using a Black-Scholes valuation model to measure the stock option expense at the date of grant. Compensation cost associated with employee stock options is recognized over the service period beginning on the grant date. Compensation cost for performance-based stock options is accrued if it is probable that the performance condition will be achieved. The expense associated with non-employee stock options is recognized over the vesting period, as specified in individual agreements.

Retrofit has issued warrants for the purchase of shares of company common stock. Total warrants outstanding at April 15, 2018, were 51,943.

Subsequent period ending April 15, 2018, on April 16, 2018, Retrofit’s issued and outstanding stock options and warrants were canceled.

Revenue Recognition—Retrofit recognizes contract revenues and obligations only when earned or incurred. Revenue from fitness devices is recognized when products are shipped. Retrofit enters into contracts with its customers over various periods of six months to three years. Advances are recorded as deferred revenue. Certain services are provided for a fixed price payable in installments, as set out in the individual statement of work, with each installment being conditional on Retrofit achieving a specific milestone. Payments received prior to satisfying the relevant revenue recognition criteria are recorded as deferred revenue in the accompanying balance sheet and recognized as revenue when the related revenue recognition criteria are met.

Retrofit is engaged in arrangements to provide its weight management program to other entities that typically contain payment provisions under which all or a portion of the consideration to be received by the company is contingent upon uncertain future events or circumstances. Retrofit Weight Management Program is a 6-month and/or 12-month targeted weight management solution combining a high touch high-tech approach with access to virtual coaching, online classes, and an online community. Multiple elements or deliverables may include (1) at 6 months, qualified participants move 1 Body Mass Index (“BMI”) point and/or lose at least 5% body weight; (2) at 12 months, qualified participants maintain move 1 BMI point and/or 5% body weight loss. Retrofit recognizes revenue on such arrangements by applying the milestone method under which consideration to be received upon achievement of a substantive milestone is recognized in its entirety in the period in which the milestone is achieved. In determining whether a milestone is substantive at the inception of an arrangement the company takes into account its nature and the degree to which achievement of the milestone is expected to contribute to the value of the overall services provided.

During period ending April 15, 2018, the company recognized $0 of contingent consideration as milestone revenue from such arrangements.

Advertising—The Company expenses advertising expenses as they are incurred. Advertising expense for the period ended April 15, 2018, was $3,634.

Derivative Instruments—The Company enters into financing arrangements that are hybrid instruments that contain embedded derivative features. Derivative instruments are recognized as either assets or liabilities in the balance sheet and are measured at fair value with gains or losses recognized in earnings. The Company determines the fair value of derivative instruments based on available market data using Monte Carlo valuation model.
**Income Taxes**—Retrofit accounts for income taxes in accordance with FASB ASC 740, Income Taxes, which requires the recognition of deferred income taxes for differences between the basis of assets and liabilities for financial statement and income tax purposes. The differences relate principally to depreciation of property and equipment, current year accruals and tax credits. Deferred tax assets and liabilities represent the future tax consequences of those differences, which will either be deductible or taxable when the assets and liabilities are recovered or settled. Deferred taxes are also recognized for operating losses that are available to offset future taxable income. A valuation allowance is established when necessary to reduce deferred tax assets to the amount expected to be realized.

**Uncertain Tax Positions**—Retrofit files income tax returns in the U.S. federal jurisdiction and the state of Illinois. The Company follows the guidance of Accounting Standards Codification (ASC 740), Accounting for Income Taxes, related to uncertainties in income taxes, which prescribes a threshold of more likely than not for recognition and derecognition of tax positions taken or expected to be taken in a tax return. There are no such uncertain tax positions for the Company for the period ended April 15, 2018. For federal income tax purposes, the tax returns essentially remain open for possible examination for a period of three years after the respective filing deadlines of those returns. Retrofit is generally no longer subject to examinations by the Internal Revenue Service for years prior to 2015.

### 3. PROPERTY AND EQUIPMENT

Depreciation expense for the period ended April 15, 2018, was $7,305. Property and equipment as of April 15, 2018, consists of the following:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Furniture and Equipment</td>
<td>$49,227</td>
</tr>
<tr>
<td>Computer Hardware</td>
<td>149,774</td>
</tr>
<tr>
<td><strong>Total Property and Equipment</strong></td>
<td><strong>199,001</strong></td>
</tr>
<tr>
<td>Less Accumulated Depreciation</td>
<td>(147,126)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$51,875</strong></td>
</tr>
</tbody>
</table>

### 4. COMMITMENTS

**Operating Lease**—Retrofit had a five-year operating lease for its office space that expired on June 2018. Monthly rental invoices included amounts for real estate taxes and maintenance in addition to the base rent. The base lease and its shares of expenses were paid through the end of the lease term when the Company moved into a new space with no contractual obligations. Total rent expense and related operating expense charged under the lease agreement for the period ending April 15, 2018, was $40,753. Base rent expense for the period ending April 15, 2018, was $14,820.

**Royalty Agreement with Related Party**—Retrofit entered into a royalty agreement with one of its advisory board members that require a minimum payment of $60,000 per year through October 2016. The agreement was renewed for five years, maturing in October 2021, requiring a minimum payment of $75,000 per year. Royalty expense for the period ended April 15, 2018, was $21,875.

### 5. CONVERTIBLE NOTES PAYABLE AND DERIVATIVE LIABILITIES

**2017 Convertible Note**

Pursuant to a note purchase agreement dated August 25, 2017, the Company raised $2,000,000 from private investors through issuance of convertible notes with the following terms: maturity date December 31, 2018, accrues interest at 8.0% per annum, secured by all of the assets of the Company, may not be prepaid without the prior written consent of holder, automatically converts into the type of security sold in the next financing round.
of at least $2,500,000, with a 20% discount and provides for a premium payment in the event of an acquisition or sale event equal to two times the outstanding balance upon closing of the acquisition or sale event (the “Contingent Redemption Feature”). The first $1,000,000 was funded on August 29, 2017 and an addition $1,000,000 was funded on November 22, 2017.

The Company determined that the Contingent Redemption Feature is an embedded derivative that requires bifurcation as detailed below. The proceeds received under the note purchase agreement were allocated to the embedded derivative based on its issuance date fair value, which was determined using a probability weighted cashflow model. The liability for the debt component is accounted for using the effective interest method. As of April 15, 2018, the outstanding balance on the note payable was $2,000,000 and the accrued interest was $80,877. As of April 15, 2018, the book value of the notes payable was $1,500,434 with an unamortized discount of $499,566.

The bifurcated embedded derivative liability was subsequently recorded at fair value of $1,188,168 of December 31, 2017, and $2,580,443 as of April 15, 2018, which is recognized in the balance sheet as “Derivative Liabilities.” Changes in fair value recorded in other loss of $1,392,275 for the period ended April 15, 2018.

As of April 15, 2018, the Company estimated the fair value of the Convertible Notes using a probability-weighted cash flow method. The fair value is sensitive to the estimated probability that a change in control event will take place (60% at December 31, 2017) or the valuation model and the discount rate. These assumptions are significant unobservable inputs, and the Company has classified the fair value of the embedded derivative as a Level 3 estimate.

Subsequent period ended April 15, 2018, on April 16, 2018, the Company entered into a merger agreement and the full balance of the note payable, accrued interest, and the embedded derivative liability were settled with the proceeds from the merger for a total of $4,161,753.

2018 Note Payable

Pursuant to a note purchase agreement dated March 12, 2018, the Company raised $620,000 from private investors through issuance of convertible notes with the following terms: maturity date April 15, 2018, accrues interest at 8.0% per annum, secured by all of the assets of the Company, may not be prepaid without the prior written consent of holder. At the maturity, the Company had the option to extend the maturity to December 31, 2018 or a different date with additional conditions as follows: automatically converts into the type of security sold in the next financing round of at least $2,500,000, with a 20% discount and provides for a premium payment in the event of an acquisition or sale event equal to two times the outstanding balance upon closing of the acquisition or sale event. The first $200,000 was funded on March 29, 2018 and an addition $420,000 was funded on March 29, 2018.

At the maturity, the Company extended the maturity date of the note from April 15, 2018 to April 16, 2018 and obtained a waiver of all interest and other charges or fees that would otherwise accrue under this note from April 13, 2018 to April 16, 2018.

Subsequent period ended April 15, 2018, on April 16, 2018, the Company entered into a merger agreement and the full balance of the note payable and the accrued interest, were settled with the proceeds from the merger for a total of $622,740.

Classification as embedded derivative. The Company considered the guidance in FASB ASC 815-15-25-1, which states that an embedded derivative shall be separated from the host contract and accounted for as a derivative instrument under Subtopic 815-10 if and only if all of the following criteria are met: a. The economic characteristics and risks of the embedded derivative are not clearly and closely related to the economic
characteristics and risks of the host contract. b. The hybrid instrument is not remeasured at fair value under otherwise applicable generally accepted accounting principles (GAAP) with changes in fair value reported in earnings as they occur. c. A separate instrument with the same terms as the embedded derivative would, pursuant to Section 815-10-15, be a derivative instrument subject to the requirements of this Subtopic. (The initial net investment for the hybrid instrument is not be considered to be the initial net investment for the embedded derivative).

The Company’s convertible note payable meet the criteria for an embedded derivative as follows: a. Not clearly and closely related b. Hybrid instrument not remeasured at fair value under GAAP: The host convertible note payable is measured pursuant to the requirements of ASC 470, Debt, and not at fair value. c. A separate instrument with the same terms would be considered a derivative: ASC 815-10-15, outlines three overall characteristics of a derivative instrument: 1) One or more underlying and notional amount or payment provision. 2) Minimal or no initial net investment 3) Provision for net settlement, contractual or otherwise. Retrofit’s contract meets the derivative criteria outlined in item c.

6. FAIR VALUE MEASUREMENTS

The Company follows the provisions of FASB ASC 815 “Derivatives and Hedging” (“ASC 815”), as their instruments are recorded as a derivative liability, at fair value, with changes in fair value reflected in income.

The Company follows Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 820, Fair Value Measurements and Disclosures, that provides the framework for measuring fair value. The framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurement) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy under FASB ASC 820 are described as follows:

Level 1. Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Company has the ability to access.

Level 2. Inputs to the valuation methodology include:

• Quoted prices for similar assets or liabilities in active markets;
• Quoted prices for identical or similar assets or liabilities in inactive markets;
• Inputs other than quoted prices that are observable for the asset or liability;
• Inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

Level 3. Inputs to the valuation methodology are unobservable and significant to the fair value measurements.

The asset’s or liability’s fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs. Following is a description of the valuation methodologies used for assets measured at fair value:

Derivative liabilities. The Company determines the fair value of derivative instruments based on available market data using Monte Carlo valuation model. The Monte Carlo valuation model was used because
management believes it reflects all the assumptions that market participants would likely consider in negotiating the transfer of the convertible notes including the potential for early conversion with premium payment in the event of an acquisition or sale event. The Company’s derivative liability is classified within Level 3 of the fair value hierarchy because certain unobservable inputs were used in the valuation model.

The following is a reconciliation of the beginning and ending balances for the liability measured at fair value on a recurring basis using significant unobservable inputs (Level 3) during the period ended April 15, 2018:

**Embedded derivative liability**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance December 31, 2017</td>
<td>$1,188,168</td>
</tr>
<tr>
<td>Fair value adjustment</td>
<td>1,392,275</td>
</tr>
<tr>
<td><strong>Balance April 15, 2018</strong></td>
<td><strong>$2,580,443</strong></td>
</tr>
</tbody>
</table>

7. CONTINGENCIES

**Going Concern**

As shown in the accompanying financial statements, the Company incurred a net loss of approximately $2,700,000 during the period ended April 15, 2018, and as of that date, the Company’s accumulated deficit was approximately $31,700,000. Those factors, as well as the uncertain conditions that the Company faces regarding the ability to raise additional capital to fund its operations, create substantial doubt about the Company’s ability to continue as a going concern for the year following the date the financial statements are available to be issued. Management of the Company has evaluated these conditions and is executing a plan to minimize its risk by acquiring new customers, maximizing engagement with customers and selling additional solutions to existing customers, reducing expenses to reduce cash burn. The ability of the Company to continue as a going concern and meet its obligations as they become due is dependent on management’s ability to successfully implement the plan. The financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

**Other Contingencies**

The Company is subject to federal, state and local laws and regulations. Future changes in government regulation or any claims as the result of audits from state agencies, should they arise, could materially impact the Company. The Company establishes liabilities when a particular contingency is probable and estimable. The Company believes the amounts provided in its financial statements are adequate in light of the probable and estimable liabilities. The Company has certain contingencies which are reasonably possible, with exposures to loss which are in excess of the amount accrued. However, the remaining reasonably possible exposure to loss cannot currently be estimated.

8. RISKS AND UNCERTAINTIES

The Company may need to raise additional capital to fund its operations. The Company may at that time be unable to raise such funds when needed or on acceptable terms. If the Company fails to raise additional funds as needed or generate sufficient revenues, it may have to delay or terminate its operations. Retrofit’s use of cash for operations since inception in 2011 resulted in an accumulated deficit of approximately $31,700,000 as of April 15, 2018. In 2014 Retrofit’s management made the conscious decision to move away from being a consumer-driven (B2C) company and focus on the employer channel (B2B) for customer acquisition. In 2015, the management team executed a five-year financial plan focused on building a growing, scalable and profitable
business that delivers value to all stakeholders. The Company’s strategies are focused on major growth drivers for the business, including expanding customers and driving revenue growth by targeting large, self-insured employers with >5,000 lives, health plans, and healthcare delivery systems, partnering with the top consulting firms, increasing customer revenue and leveraging strategic partners to accelerate customer reach. In 2018, the management team continued to apply the business model that creates predictable long-term revenue entering into multi-year contracts that includes a minimum contract revenue to ensure recurring long-term revenue.

In the course of its business affairs and operations, the Company is subject to possible loss contingencies arising from various claims against the Company. There are no matters that, in the opinion of management, will have a material adverse effect on the financial position, results of operations or cash flows of the Company.

9. RETIREMENT PLAN

Effective January 1, 2017, Retrofit established a 401(k)-profit sharing plan covering all eligible employees who have reached age 21 and completed at least three consecutive months of employment. The age requirement and service requirement is waived for employees as of January 1, 2017. The Plan provides for automatic enrollment of eligible participants, withholding 3% of participant’s compensation unless participants elect to withhold a different percentage or to not withhold at all. Matching contributions are discretionary. Roth deferrals are permitted under the Plan. Participants are vested immediately in their contributions, rollover contributions, actual earnings thereon and matching contributions. Matching contributions for the period ended April 15, 2018, was $13,442.

10. INCOME TAXES

Current and Deferred Income Tax Provisions—Since incorporation in 2011, Retrofit incurred losses and no tax payments were made, therefore no provision for income tax (benefit) was created.

Temporary Differences—Deferred income taxes are provided for the temporary differences between the financial reporting basis and the tax basis of Retrofit’s assets and liabilities. The Company has approximately $28,810,000 of net operating loss carryforwards available to offset future federal taxable income and state taxable income. As of April 15, 2018, management has determined the likelihood of realizing the benefit from a future reversal of these deferred tax assets for income tax purposes is uncertain. Therefore, a 100% allowance has been applied.

On December 22, 2017, the Tax Cuts and Jobs Act (TCJA) was signed into law and is effective on January 1, 2018. TCJA permanently reduce the corporate income tax rate from 34% to 21%. Under pre-Act law, a net operating loss (NOL) may generally be carried back two years and carried over 20 years to offset taxable income in such years. Under the new law, for NOLs arising in tax years ending after December 31, 2017, the two-year carryback provision is repealed, the NOL deduction is limited to 80% of taxable income (determined without regard to the deduction), and NOLs can be carried forward indefinitely. Under ASC 740, Income Taxes, the effects of changes in tax laws and rates on deferred tax assets and liabilities are recognized retroactively in the period in which the new legislation is enacted.

The tax effects of temporary differences and carryforwards that give rise to significant portions of deferred tax assets and liabilities consist of the following:

Deferred tax assets:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Operating Loss Carryforwards</td>
<td>$ 8,067,000</td>
</tr>
<tr>
<td>Deferred Revenue and Allowance Receivable</td>
<td>12,000</td>
</tr>
<tr>
<td>Deferred Tax Asset Valuation Allowance</td>
<td>(8,079,000)</td>
</tr>
<tr>
<td>Net Deferred Tax Assets</td>
<td>$ —</td>
</tr>
</tbody>
</table>
11. STOCK OPTIONS

During year ended December 31, 2012, Retrofit approved a stock option plan that covers certain key employees and certain advisors, consultants and directors. During subsequent years, Retrofit amended its 2012 stock incentive plan (“the Plan”) in 2014, 2015 and in 2016. As of April 15, 2018, the total number of shares of common stock reserved for issuance under this Plan was 1,434,643. Those options expire 10 years after the date of grant.

Employee and Non-Employee Stock Options—Using the Black-Scholes-Merton option pricing model, the calculated value per share on the grant date was $0.03 for employee stock options granted in 2018. The granted stock options vest ratably over 3 to 5 years with an exercise price of $0.445. The weighted-average remaining contractual term of options outstanding as of April 15, 2018, was 5 to 7 years. The shares will be issued when exercised from the pool of reserved shares. Total compensation expense for granted employee stock options in April 15, 2018, was immaterial for the financial statements. As of April 15, 2018, there is no balance on deferred compensation for future years.

The significant assumptions used to determine the calculated value of options during 2018 are as follows:

| The Underlying Stock’s Price | $ 0.378 |
| Risk-free Interest Rate | 2.49% |
| Expected Dividend Yield | 0% |
| Expected Volatility | 1%-40% |
| Expected Life in Years | 10 |

The following is an analysis of total outstanding stock options as of April 15, 2018:

| Options outstanding, beginning of year | 554,890 |
| Granted | 30,624 |
| Exercised/cancelled | — |
| Options outstanding, end of year | $ 585,514 |
| Options exercisable, end of year | $ 244,601 |
| Non-vested options outstanding, end of year | $ 340,913 |

The following is an analysis of non-vested stock options as of April 15, 2018:

<table>
<thead>
<tr>
<th>Non-vested options</th>
<th>Total Non-vested Options</th>
<th>Weighted-Average Calculated Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total non-vested options outstanding, beginning of year</td>
<td>$ 310,289</td>
<td>$ 0.01</td>
</tr>
<tr>
<td>Granted</td>
<td>30,624</td>
<td>$ 0.03</td>
</tr>
<tr>
<td>Forfeited/ Vested</td>
<td>—</td>
<td>$ 0.01</td>
</tr>
<tr>
<td>Total non-vested options outstanding, end of year</td>
<td>$ 340,913</td>
<td>$ 0.02</td>
</tr>
</tbody>
</table>

12. CONCENTRATION

For period ended April 15, 2018, the Company had four major customers which accounted for approximately 50% of total revenue and approximately 85% of the receivable balance at year end.
13. SUBSEQUENT EVENTS

On April 16, 2018, Retrofit was acquired by Livongo Health, Inc. As of that date, Raisin Merger Sub, Inc., an Illinois corporation and a wholly-owned subsidiary of Livongo Health, Inc., a Delaware corporation, merged with and into Retrofit. As of the merger date Raisin Merger Sub, Inc ceased to exist and, Retrofit succeeded as the surviving corporation, a wholly owned subsidiary of Livongo Health, Inc.

Retrofit’s issued and outstanding shares before the merger were canceled and converted into a right to receive the per share merger consideration. Each share of common stock of Raisin Merger Sub, Inc. issued and outstanding prior to the merger was converted into one share of Retrofit’s common stock. As defined on the articles of incorporation as amended on April 16, 2016, the merger transaction resulting in Retrofit as a wholly-owned subsidiary of another corporation does not constitute a liquidation event, therefore the accrued undeclared dividends on series AA shares were canceled. Retrofit’s issued and outstanding stock options and warrants not exercised by the merger date were canceled.

Retrofit has evaluated subsequent events through April 26, 2019, the date the financial statements were available to be issued. It has concluded that there were no other events that provide additional evidence about conditions that existed at the balance sheet date that require recognition in the period ended April 15, 2018 financial statements or related note disclosures in accordance with FASB ASC 855, Subsequent Events.
Introduction to Unaudited Pro Forma Financial Information

The following unaudited pro forma combined statement of operations for the year ended December 31, 2018 is presented to give effect to Livongo Health, Inc.’s (“Livongo”) acquisition of Retrofit Inc. (“Retrofit”) (“the acquisition”) on April 16, 2018 for $18.6 million, which is comprised of $12.4 million cash paid at closing and $6.2 million of contingent consideration. The unaudited pro forma condensed combined financial information was prepared in accordance with Article 11 of Regulation S-X.

The pro forma information was prepared based on the historical consolidated statement of operations of Livongo and Retrofit after giving effect to the acquisition using the acquisition method of accounting, and after applying the assumptions, reclassifications, and adjustments described in the accompanying notes. The pro forma information is presented as if the acquisition had occurred on January 1, 2018. The acquisition of Retrofit has already been reflected in Livongo’s historical audited consolidated balance sheet as of December 31, 2018. Therefore, no unaudited pro forma condensed combined balance sheet as of December 31, 2018 has been presented herein.

The historical consolidated financial statements have been adjusted in the unaudited pro forma condensed combined financial statements to give effect to pro forma events that are (1) directly attributable to the acquisition, (2) factually supportable and (3) with respect to the unaudited pro forma combined statement of operations, expected to have a continuing impact on the combined results following the business combination. The pro forma adjustments are described in the accompanying footnotes.

Livongo accounts for business combinations pursuant to Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 805, Business Combinations (“ASC 805”). In accordance with ASC 805, Livongo used its best estimates and assumptions to accurately assign fair value to the tangible assets acquired, identifiable intangible assets and liabilities assumed and the related income tax impacts as of the acquisition date. Goodwill as of the acquisition date is measured as the excess of purchase consideration over the fair value of tangible and identifiable intangible assets acquired and liabilities assumed.

The fair values assigned to Retrofit’s tangible and identifiable intangible assets acquired and liabilities assumed are based on management’s estimates and assumptions. The estimated fair values of these assets acquired and liabilities assumed are considered preliminary and are based on the information that was available as of the date of the acquisition. The preliminary estimated fair values of assets acquired and liabilities assumed and identifiable intangible assets may be subject to change as additional information is received. Thus, the estimated fair values are subject to change.

The unaudited pro forma condensed combined statement of operations is presented for informational purposes only and is not intended to represent or be indicative of the combined results of operations that Livongo would have reported had the acquisition been completed as of the date and for the periods presented, and should not be taken as representative of its consolidated results of operations following the acquisition. In addition, the unaudited pro forma condensed combined statement of operations is not intended to project the future financial results of operations of the combined company.

The unaudited pro forma condensed combined financial information does not reflect any cost savings, operating synergies or revenue enhancements that the combined company may achieve as a result of the acquisition, costs necessary to achieve such measures, or costs to integrate the operations of the combined company.

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The unaudited pro forma condensed combined statement of operations was based on and should be read in conjunction with the following historical financial statements and accompanying notes:

- Separate audited historical financial statements and accompanying notes of Livongo as of and for the year ended December 31, 2018 included elsewhere in this prospectus; and

- Separate audited historical financial statements of the Retrofit as of April 15, 2018 and for the period from January 1, 2018 through April 15, 2018 are included elsewhere in this prospectus.

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## LIVONGO HEALTH, INC.
### UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)

<table>
<thead>
<tr>
<th></th>
<th>Historical Livongo for the year ended December 31, 2018</th>
<th>Adjusted Historical Retrofit for the period from January 1, 2018 through April 15, 2018</th>
<th>Pro Forma Adjustments</th>
<th>Pro Forma Livongo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$68,431</td>
<td>$1,508</td>
<td>$—</td>
<td>$69,939</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>20,269</td>
<td>1,000</td>
<td>96(a)</td>
<td>21,365</td>
</tr>
<tr>
<td>Gross profit</td>
<td>48,162</td>
<td>508</td>
<td>(96)</td>
<td>48,574</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>24,861</td>
<td>717</td>
<td>33(b)</td>
<td>25,611</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>36,433</td>
<td>437</td>
<td>164(c)</td>
<td>37,034</td>
</tr>
<tr>
<td>General and administrative</td>
<td>23,063</td>
<td>450</td>
<td>(363)(d)</td>
<td>23,150</td>
</tr>
<tr>
<td>Change in fair value of contingent consideration</td>
<td>(1,200)</td>
<td>—</td>
<td>(1,200)</td>
<td></td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>83,157</td>
<td>1,604</td>
<td>(166)</td>
<td>84,595</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(34,995)</td>
<td>(1,096)</td>
<td>70</td>
<td>(36,021)</td>
</tr>
<tr>
<td>Other income, net</td>
<td>1,641</td>
<td>(1,594)</td>
<td>1,594(e)</td>
<td>1,641</td>
</tr>
<tr>
<td>Loss before provision for income taxes</td>
<td>(33,354)</td>
<td>(2,690)</td>
<td>1,664</td>
<td>(34,380)</td>
</tr>
<tr>
<td>Provision for (benefit from) income taxes</td>
<td>28</td>
<td>—</td>
<td>432(f)</td>
<td>460</td>
</tr>
<tr>
<td>Net loss</td>
<td>($33,382)</td>
<td>($2,690)</td>
<td>$1,232</td>
<td>($34,840)</td>
</tr>
<tr>
<td>Accretion of redeemable convertible preferred stock</td>
<td>(162)</td>
<td>—</td>
<td>—</td>
<td>(162)</td>
</tr>
<tr>
<td>Net loss attributable to common stockholders</td>
<td>($33,544)</td>
<td>($2,690)</td>
<td>$1,232(g)</td>
<td>($35,002)</td>
</tr>
<tr>
<td>Net loss per share attributable to common stockholders, basic and diluted</td>
<td>($2.02)</td>
<td>—</td>
<td>—</td>
<td>($2.11)</td>
</tr>
</tbody>
</table>

Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted 16,573 16,573

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Livongo Health, Inc.

Notes to Unaudited Pro Forma Condensed Combined Statement of Operations

Note 1. Description of Transaction

On April 16, 2018, pursuant to the terms of the Share Purchase Agreement, Livongo acquired all the shares of Retrofit, a leading provider of weight-management and disease-prevention programs based in Chicago, Illinois. With the addition of Retrofit Inc.’s health management suite, management believes that the acquisition further accelerates the broadening of our service offering to our customers. See Note 2 below for more details on the acquisition.

Note 2. Reclassification Adjustments

The total purchase consideration transferred for all of the outstanding equity interests of Retrofit consisted of a cash payment on the closing date (adjusted for customary closing adjustments) of $12.4 million. Upon the close of the Retrofit acquisition, as part of the Purchase Agreement, we placed in escrow an earn-out consideration of $7.0 million held by a third-party escrow agent to be released to the former stockholders of Retrofit contingent upon achieving future qualified member targets as determined on December 31, 2018, 2019, and 2020 (the “Contingent Consideration”). We estimated the fair value of the Contingent Consideration to be $6.2 million as of the acquisition date using a Monte Carlo simulation model, which together with the $12.4 million cash paid at closing resulted in total purchase consideration of $18.6 million.

The following table summarizes the preliminary purchase price allocation as of the acquisition date:

<table>
<thead>
<tr>
<th>Amount (in thousands)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 87</td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>409</td>
</tr>
<tr>
<td>Inventories</td>
<td>56</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>124</td>
</tr>
<tr>
<td>Property and equipment</td>
<td>52</td>
</tr>
<tr>
<td>Intangible assets(a)</td>
<td>5,580</td>
</tr>
<tr>
<td>Total assets acquired</td>
<td>$ 6,308</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$ 366</td>
</tr>
<tr>
<td>Accrued expenses and other liabilities</td>
<td>394</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>212</td>
</tr>
<tr>
<td>Total liabilities assumed</td>
<td>$ 972</td>
</tr>
<tr>
<td>Goodwill(b)</td>
<td>$ 13,223</td>
</tr>
<tr>
<td>Total Consideration Transferred</td>
<td>$ 18,559</td>
</tr>
</tbody>
</table>
(a) The estimated fair values of the intangible assets acquired were determined based on the income approach to measure the fair value of the trade name, customer relationships, and technology. These fair value measurements were based on significant inputs not observable in the market and thus represent Level 3 measurements within the fair value hierarchy. These intangible assets will be amortized using the straight-line basis over their expected useful lives. The estimated useful lives and fair values of the identifiable assets are as follows:

<table>
<thead>
<tr>
<th>Customer relationships</th>
<th>$3,890</th>
<th>10 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developed technology</td>
<td>1,650</td>
<td>5 years</td>
</tr>
<tr>
<td>Trade name</td>
<td>40</td>
<td>2 years</td>
</tr>
<tr>
<td>Total intangible assets</td>
<td>$5,580</td>
<td></td>
</tr>
</tbody>
</table>

(b) Goodwill represents the excess of the purchase price over the fair value of the underlying net assets acquired and is primarily attributable to the assembled workforce and expanded market opportunities when integrating Retrofit’s capabilities in weight-management and disease-prevention programs with Livongo’s offerings. Goodwill is not amortized but is reviewed for impairment at least annually. Goodwill recognized in the acquisition is not expected to be deductible for tax purposes.
Note 3. Reclassification Adjustments

To reflect all financial statement presentation reclassification adjustments made to align Retrofit’s historical financial statement presentation to that of Livongo:

<table>
<thead>
<tr>
<th></th>
<th>For the period ended April 15, 2018</th>
<th>Historical Retrofit</th>
<th>Conforming Accounting Adjustments</th>
<th>Adjusted Retrofit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(in thousands)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
<td>$ 1,508</td>
<td>$ —</td>
<td>$ 1,508</td>
</tr>
<tr>
<td><strong>Cost of sales</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of sales</td>
<td></td>
<td>—</td>
<td>1,000(i)</td>
<td>1,000</td>
</tr>
<tr>
<td>Wellness experts</td>
<td>586</td>
<td>(586)(i)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Fitness devices related costs</td>
<td>343</td>
<td>(343)(i)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Revenue sharing costs</td>
<td>68</td>
<td>(68)(i)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Other variable selling costs</td>
<td>3</td>
<td>(3)(i)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total cost of sales</strong></td>
<td>1,000</td>
<td>—</td>
<td>1,000</td>
<td></td>
</tr>
<tr>
<td><strong>Gross margin</strong></td>
<td></td>
<td>508</td>
<td>—</td>
<td>508</td>
</tr>
<tr>
<td><strong>Operating expenses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>—</td>
<td>717(ii)</td>
<td>717</td>
<td></td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>—</td>
<td>437(ii)</td>
<td>437</td>
<td></td>
</tr>
<tr>
<td>General and administrative</td>
<td>—</td>
<td>450(ii)</td>
<td>450</td>
<td></td>
</tr>
<tr>
<td>Selling, general and administrative</td>
<td>1,604</td>
<td>(1,604)(ii)</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>1,604</td>
<td>—</td>
<td>1,604</td>
<td></td>
</tr>
<tr>
<td><strong>Loss from operations</strong></td>
<td>(1,096)</td>
<td>—</td>
<td>(1,096)</td>
<td></td>
</tr>
<tr>
<td><strong>Interest expense</strong></td>
<td>(202)</td>
<td>—</td>
<td>202</td>
<td>—</td>
</tr>
<tr>
<td><strong>Other income, net</strong></td>
<td>—</td>
<td>(1,594)(iii)</td>
<td>(1,594)</td>
<td></td>
</tr>
<tr>
<td>Change in fair value—derivatives</td>
<td>(1,392)</td>
<td>1,392(iii)</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td><strong>Loss before income taxes</strong></td>
<td>(2,690)</td>
<td>—</td>
<td>—</td>
<td>(2,690)</td>
</tr>
<tr>
<td><strong>Income tax expense (benefit)</strong></td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td>$ (2,690)</td>
<td>—</td>
<td>—</td>
<td>$ (2,690)</td>
</tr>
</tbody>
</table>

(i) To reclassify “Wellness experts,” “Fitness devices related costs,” “Revenue sharing costs,” and “Other variable selling costs” cost of revenue line items presented above to the “Cost of revenue” line item reported in the Livongo statement of operations for the year ended December 31, 2018.

(ii) To reclassify the “Selling, general, and administrative expenses” line item presented above, to the “Research and development”, “Sales and marketing,” and “General and administrative” line items reported in the Livongo statement of operations for the year ended December 31, 2018.

(iii) To reclassify the “Interest expense” and “Change in fair value—derivatives” line items presented above as “Other income, net.”
### Note 4. Unaudited Pro Forma Financial Statement Adjustments

#### (a) Cost of revenue

<table>
<thead>
<tr>
<th>Cost of revenue</th>
<th>December 31, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>To record amortization expense of the developed technology intangible asset acquired for the period of January 1, 2018 to April 15, 2018. The amortization expense was calculated based on the fair value of $1.7 million and useful life of 10 years.</td>
<td>$ 96</td>
</tr>
</tbody>
</table>

#### (b) Research and development

<table>
<thead>
<tr>
<th>Research and development</th>
<th>December 31, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>To record expense on stock-based awards granted in connection with the acquisition. The shares granted vest over a four-year period as services are provided.</td>
<td>$ 33</td>
</tr>
</tbody>
</table>

#### (c) Sales and marketing

<table>
<thead>
<tr>
<th>Sales and marketing</th>
<th>December 31, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>To record expense on stock-based awards granted in connection with the acquisition. The shares granted vest over a four-year period as services are provided.</td>
<td>$ 44</td>
</tr>
<tr>
<td>To record amortization expense of intangible assets for an acquired trade name and customer relationships for the period January 1, 2018 to April 15, 2018. The amortization expense was calculated based on the fair value of $40,000 for the trade name and $3.9 million for customer relationships, with useful lives of two and ten years, respectively.</td>
<td>$ 120</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 164</strong></td>
</tr>
</tbody>
</table>

#### (d) General and administrative

<table>
<thead>
<tr>
<th>General and administrative</th>
<th>December 31, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>To remove Retrofit’s historical amortization expense relating to its developed technology intangible assets</td>
<td>$ (47)</td>
</tr>
<tr>
<td>To remove transaction costs for the period January 1, 2018 to April 15, 2018 incurred as a result of the acquisition.</td>
<td>(368)</td>
</tr>
<tr>
<td>To record expense on stock-based awards granted in connection with the acquisition. The shares granted vest over a four-year period as services are provided.</td>
<td>52</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>(363)</strong></td>
</tr>
</tbody>
</table>

#### (e) Other income, net

<table>
<thead>
<tr>
<th>Other income, net</th>
<th>December 31, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>To remove interest expenses related to Retrofit’s historical convertible notes payable that were extinguished as a result of the acquisition.</td>
<td>$ 202</td>
</tr>
<tr>
<td>To remove the change in fair value of the embedded derivative bifurcated from Retrofit’s historical debt that was extinguished as a result of the acquisition.</td>
<td>$ 1,392</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,594</strong></td>
</tr>
</tbody>
</table>
(f) **Provision for (benefit from) income taxes**

<table>
<thead>
<tr>
<th>December 31, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
</tr>
<tr>
<td>$ 432</td>
</tr>
</tbody>
</table>

To record the estimated tax impact of the unaudited pro forma adjustments described above based on the combined state and federal statutory tax rate of 26%.

(g) To reflect the impact of the unaudited pro forma adjustments to net loss per share attributable to common stockholders, basic and diluted.
Empowering people with chronic conditions to live better and healthier lives.

We started with diabetes, but now address hypertension, prediabetes, weight management, and behavioral health.
Livongo Empowering people with chronic conditions to live better and healthier lives. We started with diabetes, but now address hypertension, prediabetes, weight management, and behavioral health.
PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The following table sets forth all expenses to be paid by us, other than underwriting discounts and commissions, upon completion of this offering. All amounts shown are estimates except for the SEC registration fee, the FINRA filing fee and The Nasdaq Global Select Market listing fee.

<table>
<thead>
<tr>
<th>Amount Paid or to be Paid</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>SEC registration fee</td>
<td>$12,120</td>
</tr>
<tr>
<td>FINRA filing fee</td>
<td>15,500</td>
</tr>
<tr>
<td>The Nasdaq Global Select Market listing fee</td>
<td>*</td>
</tr>
<tr>
<td>Printing and engraving</td>
<td>*</td>
</tr>
<tr>
<td>Legal fees and expenses</td>
<td>*</td>
</tr>
<tr>
<td>Accounting fees and expenses</td>
<td>*</td>
</tr>
<tr>
<td>Transfer agent and registrar fees</td>
<td>*</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>*</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$*</td>
</tr>
</tbody>
</table>

* To be filed by amendment.

ITEM 14. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 145 of the Delaware General Corporation Law authorizes a corporation’s board of directors to grant, and authorizes a court to award, indemnity to officers, directors, and other corporate agents.

We expect to adopt an amended and restated certificate of incorporation, which will become effective immediately prior to the completion of this offering, and which will contain provisions that limit the liability of our directors for monetary damages to the fullest extent permitted by Delaware law. Consequently, our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for the following:

- any breach of their duty of loyalty to our company or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- any transaction from which they derived an improper personal benefit.

Any amendment to, or repeal of, these provisions will not eliminate or reduce the effect of these provisions in respect of any act, omission or claim that occurred or arose prior to that amendment or repeal. If the Delaware General Corporation Law is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of our directors will be further limited to the greatest extent permitted by the Delaware General Corporation Law.

In addition, we expect to adopt amended and restated bylaws, which will become effective immediately prior to the completion of this offering, and which will provide that we will indemnify, to the fullest extent permitted by law, any person who is or was a party or is threatened to be made a party to any action, suit or
proceeding by reason of the fact that he or she is or was one of our directors or officers or is or was serving at our request as a director or officer of another corporation, partnership, joint venture, trust, or other enterprise. Our amended and restated bylaws are expected to provide that we may indemnify to the fullest extent permitted by law any person who is or was a party or is threatened to be made a party to any action, suit, or proceeding by reason of the fact that he or she is or was one of our employees or agents or is or was serving at our request as an employee or agent of another corporation, partnership, joint venture, trust, or other enterprise. Our amended and restated bylaws will also provide that we must advance expenses incurred by or on behalf of a director or officer in advance of the final disposition of any action or proceeding, subject to limited exceptions.

Further, we entered into or will enter into indemnification agreements with each of our directors and executive officers that may be broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements require us, among other things, to indemnify our directors and executive officers against liabilities that may arise by reason of their status or service. These indemnification agreements also require us to advance all expenses incurred by the directors and executive officers in investigating or defending any such action, suit, or proceeding. We believe that these agreements are necessary to attract and retain qualified individuals to serve as directors and executive officers.

The limitation of liability and indemnification provisions that are expected to be included in our amended and restated certificate of incorporation, amended and restated bylaws and the indemnification agreements that we have entered into or will enter into with our directors and executive officers may discourage stockholders from bringing a lawsuit against our directors and executive officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against our directors and executive officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and executive officers as required by these indemnification provisions. At present, we are not aware of any pending litigation or proceeding involving any person who is or was one of our directors, officers, employees or other agents or is or was serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, for which indemnification is sought, and we are not aware of any threatened litigation that may result in claims for indemnification.

We have obtained insurance policies under which, subject to the limitations of the policies, coverage is provided to our directors and executive officers against loss arising from claims made by reason of breach of fiduciary duty or other wrongful acts as a director or executive officer, including claims relating to public securities matters, and to us with respect to payments that may be made by us to these directors and executive officers pursuant to our indemnification obligations or otherwise as a matter of law.

Certain of our non-employee directors may, through their relationships with their employers, be insured and/or indemnified against certain liabilities incurred in their capacity as members of our board of directors.

The underwriting agreement filed as Exhibit 1.1 to this registration statement will provide for indemnification by the underwriters of us and our officers and directors for certain liabilities arising under the Securities Act or otherwise.

ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES.

Since January 1, 2016, we have issued the following unregistered securities:

Preferred Stock Issuances

In April 2016, we sold an aggregate of 14,856,829 shares of our Series C redeemable convertible preferred stock at a purchase price of $3.3318 per share, for an aggregate purchase price of $49.5 million.
In March 2017, we sold an aggregate of 11,773,932 shares of our Series D redeemable convertible preferred stock at a purchase price of $4.4590 per share, for an aggregate purchase price of $52.5 million.

In April 2018, we sold an aggregate of 12,655,477 shares of our Series E redeemable convertible preferred stock at a purchase price of $8.2968 per share, for an aggregate purchase price of $105.0 million.

**Option and RSU Issuances**

From January 1, 2016 to June 17, 2019, we granted to our directors, officers, employees, consultants, and other service providers options to purchase an aggregate of 15,067,738 shares of our common stock under our 2014 Plan at exercise prices ranging from $0.80 to $3.62 per share.

From January 1, 2016 to June 17, 2019, we granted to our directors, officers, employees, consultants, and other service providers an aggregate of 5,533,844 restricted stock units to be settled in shares of our common stock under our 2014 Plan.

**Restricted Stock Issuances**

From January 1, 2016 to June 17, 2019, we granted restricted stock awards with respect to 2,132,381 shares of our common stock, including a restricted stock award with respect to 982,301 shares of our common stock to Zane Burke, our Chief Executive Officer.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering. We believe the offers, sales, and issuances of the above securities were exempt from registration under the Securities Act (or Regulation D or Regulation S promulgated thereunder) by virtue of Section 4(2) of the Securities Act because the issuance of securities to the recipients did not involve a public offering or in reliance on Rule 701 because the transactions were pursuant to compensatory benefit plans or contracts relating to compensation as provided under such rule. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon the stock certificates issued in these transactions. All recipients had adequate access, through their relationships with us, to information about us. The sales of these securities were made without any general solicitation or advertising.

**ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.**

(a) Exhibits.

See the Exhibit Index immediately preceding the signature page hereto for a list of exhibits filed as part of this registration statement on Form S-1, which Exhibit Index is incorporated herein by reference.

(b) Financial Statement Schedules.

All financial statement schedules are omitted because the information called for is not required or is shown either in the consolidated financial statements or in the notes thereto.

**ITEM 17. UNDERTAKINGS.**

The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, or the Act, may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing
provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

   (1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

   (2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

   (3) For the purpose of determining liability under the Securities Act of 1933 to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

   (4) For the purpose of determining liability of the undersigned Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of securities, in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser: (a) any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424 under the Securities Act; (b) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant; (c) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and (d) any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.
## EXHIBIT INDEX

<table>
<thead>
<tr>
<th>Exhibit Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1*</td>
<td>Form of Underwriting Agreement.</td>
</tr>
<tr>
<td>2.2†</td>
<td>Agreement and Plan of Merger by and among the Registrant, Raisin Merger Sub, Inc., Retrofit Inc., and the stockholder representative named therein, dated as of March 31, 2018.</td>
</tr>
<tr>
<td>3.1</td>
<td>Amended and Restated Certificate of Incorporation of the Registrant, as amended, as currently in effect.</td>
</tr>
<tr>
<td>3.2</td>
<td>Form of Amended and Restated Certificate of Incorporation of the Registrant, to be in effect upon the completion of this offering.</td>
</tr>
<tr>
<td>3.3</td>
<td>Bylaws of the Registrant, as amended, as currently in effect.</td>
</tr>
<tr>
<td>3.4</td>
<td>Form of Amended and Restated Bylaws of the Registrant, to be in effect upon the completion of this offering.</td>
</tr>
<tr>
<td>4.1*</td>
<td>Form of common stock certificate of the Registrant.</td>
</tr>
<tr>
<td>4.2</td>
<td>Fourth Amended and Restated Investors’ Rights Agreement, by and among the Registrant and certain holders of its capital stock, dated as of April 10, 2018.</td>
</tr>
<tr>
<td>4.3</td>
<td>Warrant between the Registrant and Cerner Capital, Inc., dated as of March 1, 2015.</td>
</tr>
<tr>
<td>4.4</td>
<td>Warrant to Purchase Stock between the Registrant and Comerica Bank, dated as of April 16, 2015.</td>
</tr>
<tr>
<td>4.5</td>
<td>Warrant to Purchase Stock between the Registrant and Comerica Bank, dated as of September 5, 2014.</td>
</tr>
<tr>
<td>5.1*</td>
<td>Opinion of Wilson Sonsini Goodrich &amp; Rosati, P.C.</td>
</tr>
<tr>
<td>10.1+</td>
<td>Form of Indemnification Agreement between the Registrant and each of its directors and officers.</td>
</tr>
<tr>
<td>10.2+</td>
<td>2019 Equity Incentive Plan and related form agreements.</td>
</tr>
<tr>
<td>10.3+</td>
<td>2019 Employee Stock Purchase Plan and related form agreements.</td>
</tr>
<tr>
<td>10.4+</td>
<td>2019 Employee Bonus Plan.</td>
</tr>
<tr>
<td>10.5+</td>
<td>2014 Equity Incentive Plan and related form agreements.</td>
</tr>
<tr>
<td>10.6+</td>
<td>2008 Equity Incentive Plan and related form agreements.</td>
</tr>
<tr>
<td>10.7+</td>
<td>Employment Agreement between the Registrant and Zane Burke, dated as of March 6, 2019.</td>
</tr>
<tr>
<td>10.8+</td>
<td>Employment Agreement between the Registrant and Glen Tullman, dated as of April 22, 2014.</td>
</tr>
<tr>
<td>10.9+</td>
<td>Employment Agreement between the Registrant and Jennifer Schneider, dated as of September 1, 2015.</td>
</tr>
<tr>
<td>10.10+</td>
<td>Employment Agreement between the Registrant and Lee Shapiro, dated as of January 18, 2019.</td>
</tr>
<tr>
<td>10.12+</td>
<td>Amendment to Restricted Stock Award Agreement between the Registrant and Zane Burke, dated as of June 26, 2019.</td>
</tr>
<tr>
<td>Exhibit Number</td>
<td>Description</td>
</tr>
<tr>
<td>----------------</td>
<td>-------------</td>
</tr>
<tr>
<td>10.13</td>
<td>Lease between the Registrant and SFF Castro Station, LLC, dated as of December 21, 2014, and subsequent amendments.</td>
</tr>
<tr>
<td>21.1</td>
<td>List of subsidiaries of the Registrant.</td>
</tr>
<tr>
<td>23.1</td>
<td>Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.</td>
</tr>
<tr>
<td>23.2</td>
<td>Consent of CJBS, LLC, Independent Accounting Firm.</td>
</tr>
<tr>
<td>23.3*</td>
<td>Consent of Wilson Sonsini Goodrich &amp; Rosati, P.C. (included in Exhibit 5.1).</td>
</tr>
<tr>
<td>24.1</td>
<td>Power of Attorney (included on the signature page hereto).</td>
</tr>
</tbody>
</table>

* To be filed by amendment.  
† Indicates management contract or compensatory plan.  
‡ Certain portions of this exhibit (indicated by "[***]"") have been omitted as Registrant determined the omitted information (i) is not material and (ii) would be competitively harmful to Registrant if publicly disclosed.
SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this registration statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in Mountain View, California, on the 28th day of June, 2019.

LIVONGO HEALTH, INC.

By: /s/ Zane Burke
Zane Burke
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Glen Tullman, Zane Burke, and Jennifer Schneider, and each one of them, as his or her true and lawful attorneys-in-fact and agents with full power of substitution and resubstitution, for him or her and in their name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to sign any registration statement for the same offering covered by this registration statement that is to be effective on filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and all post-effective amendments thereto, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact, and agents or any of them, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement on Form S-1 has been signed by the following persons in the capacities and on the dates indicated.

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<th>Title</th>
<th>Date</th>
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</thead>
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<td>Chief Executive Officer &amp; Director</td>
<td>June 28, 2019</td>
</tr>
<tr>
<td>ZANE BURKE</td>
<td>(Principal Executive Officer)</td>
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</tr>
<tr>
<td>/s/ Lee Shapiro</td>
<td>Chief Financial Officer</td>
<td>June 28, 2019</td>
</tr>
<tr>
<td>LEE SHAPIRO</td>
<td>(Principal Financial Officer &amp; Principal Accounting Officer)</td>
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<tr>
<td>/s/ Glen E. Tullman</td>
<td>Executive Chairman &amp; Director</td>
<td>June 28, 2019</td>
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<tr>
<td>GLEN E. TULLMAN</td>
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<tr>
<td>/s/ Christopher Bischoff</td>
<td>Director</td>
<td>June 28, 2019</td>
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<tr>
<td>CHRISTOPHER BISCHOFF</td>
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<tr>
<td>/s/ Karen L. Daniel</td>
<td>Director</td>
<td>June 28, 2019</td>
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<tr>
<td>KAREN L. DANIEL</td>
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<tr>
<td>/s/ Sandra Fenwick</td>
<td>Director</td>
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<tr>
<td>SANDRA FENWICK</td>
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<tr>
<td>/s/ Philip D. Green</td>
<td>Director</td>
<td>June 28, 2019</td>
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<tr>
<td>PHILIP D. GREEN</td>
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<td></td>
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<tr>
<td>/s/ Hemant Taneja</td>
<td>Director</td>
<td>June 28, 2019</td>
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<tr>
<td>HEMANT TANEJA</td>
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AGREEMENT AND PLAN OF MERGER

by and among

myStrength, Inc.,

each Stockholder that executes and delivers a Joinder following the execution and delivery of this Agreement,

the Representative,

Livongo Health, Inc.

and

Livongo Merger Sub, Inc.

Dated January 23, 2019
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This Agreement and Plan of Merger (this “Agreement”) is entered into on January 23, 2019 by and among Livongo Health, Inc., a Delaware corporation (the “Buyer”), Livongo Merger Sub, Inc., a Delaware corporation (“Merger Sub”), myStrength, Inc., a Delaware corporation (the “Company”), each Stockholder that executes and delivers a Joinder following the execution and delivery of this Agreement, and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as the representative, agent and attorney-in-fact of the Equityholders (the “Representative”). Buyer, Merger Sub, the Company, the Equityholders and the Representative are referred to collectively herein as the “Parties” and individually as a “Party.”

PRELIMINARY STATEMENTS

A. Buyer desires to acquire the Company by causing Merger Sub to merge into the Company, with the Company being the Surviving Corporation and becoming a wholly-owned subsidiary of Buyer (the “Merger”) on the terms and conditions set forth in this Agreement.

B. The board of directors of the Company has approved this Agreement in accordance with the General Corporation Law of the State of Delaware (the “DGCL”) and determined that this Agreement and the Merger are advisable and in the best interests of the Stockholders.

C. The board of directors of Merger Sub has approved this Agreement in accordance with the DGCL and determined that this Agreement and the Merger are advisable and in the best interest of the sole stockholder of Merger Sub.

AGREEMENT

Now, therefore, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, covenants and other valuable consideration herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1

THE MERGER

1.1 The Merger. In accordance with the terms and upon the conditions of this Agreement, at the Effective Time, Merger Sub shall be merged with and into the Company, whereupon the separate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation. The Company, as the surviving corporation in the Merger, is hereinafter sometimes referred to as the “Surviving Corporation.”

1.2 Effective Time. At the Closing, Buyer, Merger Sub and the Company shall cause the certificate of merger, in substantially the form attached hereto as Exhibit A (the “Certificate of Merger”) to be executed, acknowledged and filed with the Secretary of State of the State of Delaware, and shall make all other filings or recordings required by the DGCL to complete the Merger. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of the State of Delaware or at such other time as Buyer and the Company shall agree and shall specify in the Certificate of Merger (the “Effective Time”).

1.3 Merger Consideration. The aggregate consideration to be paid by Buyer and Merger Sub in respect of the Merger shall be the Aggregate Merger Consideration, as adjusted pursuant to Sections 1.11, 1.12 and 1.13, payable in cash. The amount payable to each Equityholder on account of such Equityholder’s Company Securities shall be payable in cash as set forth on the Allocation Schedule.
1.4 **Effect of the Merger.** At the Effective Time, the effect of the Merger shall be as provided in this Agreement and the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, from and after the Effective Time, all of the property, rights, privileges, immunities, powers and purposes of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, obligations and other liabilities of the Company and Merger Sub shall become the debts, obligations and other liabilities of the Surviving Corporation.

1.5 **Certificate of Incorporation; Bylaws.** The certificate of incorporation and bylaws of the Merger Sub in effect at the Effective Time shall be the certificate of incorporation and bylaws of the Surviving Corporation until changed or amended as provided by the certificate of incorporation or the bylaws of the Surviving Corporation or in accordance with applicable Law.

1.6 **Directors and Officers.** From and after the Effective Time, until successors are duly elected or appointed in accordance with applicable Law, the directors and officers of the Merger Sub at the Effective Time shall be the directors and officers, as applicable, of the Surviving Corporation.

1.7 **Effect on Stock, Warrants and Options.** On the terms and subject to the conditions of this Agreement, at the Effective Time, by virtue of the Merger and without any action on the part of the Parties or any of the Equityholders, the following shall occur:

(a) **Common Stock.** Each share of Common Stock issued and outstanding including all shares of Common Stock required to be issued upon the exercise of any Options or Warrants prior to the Effective Time, shall, by virtue of the Merger, be cancelled and extinguished, and each such share of Common Stock (other than Dissenting Shares and Treasury Shares) shall be converted into the right to receive (w) the Per Share Common Closing Consideration, plus (x) upon release from the Escrow Fund pursuant to the terms and conditions of the Escrow Agreement, the Per Share Escrow Release, plus (y) upon release from the Expense Fund, the Per Share Expense Fund Release, plus (z) the Per Share Earn-Out Payments (if any).

(b) **Treasury Stock.** Each share of Common Stock that is owned by the Company immediately prior to the Effective Time (if any) (“Treasury Shares”) shall automatically be cancelled and shall cease to exist and no consideration shall be delivered in exchange therefor.

(c) **Warrants.** Each Warrant that is unexpired, unexercised and outstanding immediately prior to the Effective Time and that has an exercise price less than the Per Share Common Cash Payment (each, an “In the Money Warrant,” and collectively, “In the Money Warrants”) shall, on the terms and subject to the conditions set forth in this Agreement, by virtue of the Merger and without any action on the part of Buyer, Merger Sub, the Company or the Stockholders, thereafter no longer be exercisable but shall entitle the holder of such In the Money Warrant, in cancellation and settlement therefor, to receive for each share of Common Stock issuable upon the exercise of such In the Money Warrant immediately prior to the Effective Time, (w) the Net Warrant Merger Consideration, plus (x) upon release from the Escrow Fund pursuant to the terms and conditions of the Escrow Agreement, the Per Share Escrow Release, plus (y) upon release from the Expense Fund, the Per Share Expense Fund Release, plus (z) the Per Share Earn-Out Payments (if any). Each Warrant that is unexpired, unexercised and outstanding immediately prior to the Effective Time and that has a per share exercise price equal to or greater than the Per Share Common Cash Payment (collectively, “Out of the Money Warrants”) shall, on the terms and subject to the conditions set forth in this Agreement, by virtue of the Merger and without any action on the part of Buyer, Merger Sub, the Company or the Stockholders, be cancelled without any payment of consideration.

(d) **Options.**

(i) **In the Money Options.** Prior to the Closing, the board of directors of the Company shall have adopted appropriate resolutions and taken all other actions necessary and appropriate to provide that each
Option outstanding and unexercised immediately prior to the Effective Time under any stock option plan of the Company shall automatically and without any required action on the part of the holder thereof, be cancelled and retired and cease to exist effective as of the Effective Time, and, in exchange therefor, each former holder of any such cancelled Option and that has an exercise price per share of Company Common Stock subject thereto less than the Per Share Common Cash Payment, which are listed on Schedule 1.17(a) (each an “In the Money Option” and collectively, “In the Money Options”), shall be entitled to receive, subject to the execution of an Optionholder Letter of Transmittal (as defined below), in consideration of the cancellation of such Option and in settlement therefor, an amount in cash (without interest and subject to any applicable withholding or other Taxes required by applicable Law to be withheld or otherwise paid by the Company) per share of Common Stock subject to such Option, whether vested or unvested as of the Closing Date, equal to (w) the Net Option Merger Consideration, plus (x) upon release from the Escrow Fund pursuant to the terms and conditions of the Escrow Agreement, the Per Share Escrow Release, plus (y) upon release from the Expense Fund, the Per Share Expense Fund Release, plus (z) the Per Share Earn-Out Payments (if any).

(ii) Out of the Money Options. Each Option outstanding and unexercised immediately prior to the Effective Time under any stock option plan of the Company that is not an In the Money Option, all of which are listed on Schedule 1.17(a) (collectively, “Out of the Money Options”), shall be cancelled and retired in accordance with the terms.

(e) Merger Sub Securities. Each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully-paid and nonassessable share of common stock of the Surviving Corporation.

1.8 Closing. Subject to the terms and conditions of this Agreement, the closing of the transactions contemplated by this Agreement (the “Closing”) shall take place electronically by the mutual exchange of facsimile or portable document format (.PDF) signatures not later than five (5) Business Days after the last of the conditions to Closing set forth in Article 5 has been satisfied or waived (other than conditions, which, by their nature, are to be satisfied on the Closing Date), or at such other time as the Company and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the “Closing Date”).

1.9 Estimated Cash Payment. Not less than five (5) Business Days prior to the Closing Date, the Company shall deliver to Buyer (i) a certificate (the “Estimated Closing Statement”) signed by an officer of the Company setting forth the Company’s good faith estimate of the Cash Amount, Debt Amount, Remaining Designated Payables Amount and Transaction Expenses Amount in each case as of immediately prior to the Closing, and Working Capital Deficit, if any, or Working Capital Surplus, if any, and, based on such estimates, the estimated Cash Payment (the “Estimated Cash Payment”) and (ii) all records and work papers reasonably necessary to compute and verify the information set forth in such certificate.

1.10 Payment and Delivery of the Aggregate Merger Consideration.

(a) Closing Payments. At the Closing, Buyer shall:

(i) pay (x) to the Exchange Agent for the benefit of the Stockholders and the holders of Warrants that portion of the Estimated Cash Payment (other than such holders’ portion of the Escrow Amount, the Founders’ Escrow Amount and the Expense Amount) payable to the Stockholders and the holders of In the Money Warrants pursuant to Section 1.7, and (y) to the Company or its current payroll provider for distribution to the holders of In the Money Options, that portion of the Estimated Cash Payment (other than such holders’ portion of the Escrow Amount and the Expense Amount) payable to the holders of Options pursuant to Section 1.7, all in accordance with Schedule 1.17(b);

(ii) pay the Debt Amount, if any, pursuant to the payoff letters delivered by the Company to Buyer pursuant to Section 7.1(i).
(iii) pay the Transaction Expenses Amount pursuant to the direction of the Company;
(iv) pay to the Escrow Agent, via wire transfer to an account designated by the Escrow Agent, a cash amount equal to the Escrow Amount;
(v) pay to the Escrow Agent via wire transfer to an account designated by the Escrow Agent, a cash amount equal to the Founders’ Escrow Amount; and
(vi) pay to the Representative, via wire transfer to an account designated by the Representative, a cash amount equal to the Expense Amount.

(b) Escrow. (i) At or before the Effective Time, Buyer or Merger Sub shall deposit, or shall cause to be deposited, for the benefit of the Equityholders, the Escrow Amount with JPMorgan Chase Bank, N.A., as escrow agent (the “Escrow Agent”), such deposit, together with any interest thereon, to constitute an escrow fund (the “Escrow Fund”) to be governed by the provisions set forth herein and in an escrow agreement in substantially the form attached hereto as Exhibit D (the “Escrow Agreement”). The Escrow Fund shall be available as security for the benefit of Buyer for Buyer Indemnitees pursuant to the Equityholders’ indemnification obligations set forth in this Agreement. The Escrow Fund shall be held by the Escrow Agent and held and distributed in accordance with the provisions of the Escrow Agreement and this Agreement.

(ii) At or before the Effective Time, Buyer or Merger Sub shall deposit or shall cause to be deposited, the Founders’ Escrow Amount with Escrow Agent, such deposit together with any interest thereon to constitute a separate escrow fund (the “Founders’ Escrow Fund”) to be governed by the provisions set forth herein and in the Escrow Agreement. The Founders’ Escrow Fund shall be held by the Escrow Agent and held in and distributed in accordance with the provisions of the Escrow Agreement and this Agreement.

(c) Cash Payment Adjustment. Within five (5) Business Days after the Cash Payment becomes final and binding in accordance with Section 1.11:

(i) if the Cash Payment exceeds the Estimated Cash Payment, then such excess shall be paid by Buyer in cash (A) to the Exchange Agent, for the benefit of and further payment to the Stockholders and the holders of In the Money Warrants, that portion of the Estimated Cash Payment payable to the Stockholders and the holders of In the Money Warrants pursuant to Section 1.7, and (B) to the Surviving Corporation, for the benefit of and further payment to the holders of In the Money Options, that portion of the Estimated Cash Payment payable to the holders of In the Money Options pursuant to Section 1.7, in all cases in accordance with their respective Fully-Diluted Pro Rata Percentages; or

(ii) if the Estimated Cash Payment exceeds the Cash Payment, then such excess less the then Unutilized Threshold, if any, shall first be paid by the Escrow Agent to Buyer from the Escrow Fund.

(d) Earn-Out Payments. Buyer shall pay the Earn-Out Payments, if any, in cash (A) to the Exchange Agent, for the benefit of and further payment to the Stockholders and the holders of In the Money Warrants, that portion of the Earn-Out Payments payable to the Stockholders and the holders of In the Money Warrants pursuant to Section 1.7, (B) to the Surviving Corporation, for the benefit of and further payment to the holders of In the Money Options, that portion of the Earn-Out Payments payable to the holders of In the Money Options pursuant to Section 1.7, in all cases in accordance with their respective Fully-Diluted Pro Rata Percentages, and (C) to the Surviving Corporation for payment of the Contingent Transaction Fees.

(e) Payments. All payments to the Exchange Agent pursuant to this Section 1.10 shall be made by wire transfer of immediately available funds to an account designated by the Exchange Agent in writing. All payments to Buyer pursuant to Section 1.10(c)(ii) shall be made by wire transfer of immediately available funds to an account designated by Buyer in writing. All payments to Representative pursuant to this Section 1.10 shall be made by wire transfer of immediately available funds to an account designated by Representative in writing.
Withholding. The Parties and any other applicable withholding agent will be entitled to deduct and withhold from any amounts payable pursuant to or as contemplated by this Agreement, the Exchange Agent Agreement or the Escrow Agreement any Taxes or other amounts required under the Code or any Law to be deducted and withheld, and, to the extent that any amounts are so deducted or withheld, such amounts will be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made. Notwithstanding anything to the contrary herein, any compensatory amounts subject to payroll reporting and withholding that are payable pursuant to or as contemplated by this Agreement, the Exchange Agent Agreement or the Escrow Agreement shall be payable in accordance with the applicable payroll procedures of the Company. Except with respect to any compensatory payments, Buyer shall notify (to the extent reasonably practicable) the Representative of any amounts that it intends to deduct and withhold at least three (3) Business Days prior to the scheduled date of such payment, and Buyer shall work in good faith with the Representative to minimize any such withheld amounts.

Loans. To the extent any Equityholder has outstanding loans from the Company as of the Effective Time, then the amount of any such outstanding loan together with any accrued interest shall be netted against proceeds to be paid hereunder.

1.11 Cash Payment Determination. Within ninety (90) days after the Closing Date, Buyer shall prepare and deliver to the Representative (a) a statement setting forth Buyer’s calculation of the Cash Amount, Debt Amount, Designated Payables Amount and Transaction Expenses Amount, and Working Capital, Working Capital Deficit, if any, and Working Capital Surplus, if any, and based on such calculations, the Cash Payment (the “Closing Statement”), and (b) all records and work papers reasonably necessary to compute and verify the information set forth in the Closing Statement. If the Representative has any objections to the Closing Statement prepared by Buyer, then the Representative will deliver a reasonably detailed written statement (the “Objections Statement”) describing (a) which items on the Closing Statement have not been prepared in accordance with this Agreement, (b) the basis for the Representative's disagreement with the calculation of such items and (c) the Representative's proposed dollar amount for each item in dispute, to Buyer within thirty (30) days after delivery of the Closing Statement. If the Representative fails to deliver an Objections Statement within such thirty (30) day period, then the Closing Statement shall become final and binding on all Parties. The Representative shall be deemed to have agreed with all amounts and items contained or reflected in the Closing Statement to the extent such amounts or items are not disputed in the Objections Statement. If the Representative delivers an Objections Statement within such thirty (30) day period, then the Representative and Buyer will negotiate in good faith to resolve any such disputes, but if a final resolution is not obtained within thirty (30) days after the Representative has submitted any Objections Statements, any remaining matters which are in dispute will be resolved by the Denver office of Deloitte Touche Tohmatsu Limited (the “Accountants”). The Accountants will prepare and deliver a written report to Buyer and the Representative and will submit a proposed resolution of such unresolved disputes promptly, but in any event within thirty (30) days after the dispute is submitted to the Accountants. The Accountants’ determination of such unresolved disputes will be final and binding upon all Parties and not subject to review by a court or other tribunal; provided, however, that no such determination shall be any more favorable to Buyer than is set forth in the Closing Statement or any more favorable to the Representative than is proposed in the Objections Statement. The costs, expenses and fees of the Accountants shall be borne by either the Equityholders, if the Representative’s calculation of the Cash Payment has the greatest difference from the final Cash Payment as determined by the Accountants under this Section 1.11, or Buyer, if Buyer’s calculation of the Cash Payment has the greatest difference from the final Cash Payment as determined by the Accountants under this Section 1.11; otherwise, such costs, fees and expenses of the Accountants shall be borne equally by Buyer, on the one hand, and the Representative (on behalf of the Equityholders), on the other hand. The final Closing Statement, however determined pursuant to this Section 1.11, will produce the Working Capital Deficit, if any, the Working Capital Surplus, if any, the Cash Amount, the Debt Amount, the Designated Payables Amount and the Transaction Expenses Amount to be used to determine the final Cash Payment (the “Final Cash Payment”).
1.12 Calculation of Earn-Out Payments. The Earn-Out Payments (if any) shall be calculated as follows:

(a) up to $[***] (the “Anthem Earn-Out Payment”), which shall be earned as follows: (i) $[***] (the “First Anthem Earn-Out Payment”) shall be earned upon achievement of the First Anthem Milestone and (ii) the remaining $[***] (the “Second Anthem Earn-Out Payment”) shall be earned upon achievement of the Second Anthem Milestone; and

(b) up to $[***] (the “Consolidated Earn-Out Revenue Payment”), which shall be earned as follows: (i) $[***] (the “First Consolidated Earn-Out Payment”) shall be earned upon the achievement of the First Consolidated Milestone and (ii) the remaining $[***] (the “Second Consolidated Earn-Out Payment”) shall be earned upon the achievement of the Second Consolidated Milestone.

To the extent the Second Anthem Milestone is not achieved but the full amount of the Company’s 2019 Forecast Consolidated Revenue Target is achieved and at least $[***] of Anthem Revenue is recognized in Fiscal 2019, then the Second Anthem Milestone shall be deemed to be achieved and, notwithstanding Section 1.12(b), the Second Anthem Earn-Out Payment shall be earned.

Each Earn-Out Payment, less the applicable Contingent Transaction Fees, shall be paid by Buyer to the Exchange Agent or the Surviving Corporation, as applicable, in accordance with Section 1.10(d), within sixty (60) days after the achievement of the First Anthem Milestone, Second Anthem Milestone, First Consolidated Milestone and/or Second Consolidated Milestone, as applicable. The applicable Contingent Transaction Fees for each Earn-Out Payment shall be paid to the Surviving Corporation for payment to Covington Associates LLC. The Parties agree to treat any Earn-Out Payment as additional consideration for the Company Securities for applicable Tax purposes.

1.13 Determination of Earn-Out Payments. To the extent that Buyer determines that the full amount of the Earn-Out Payments are not achieved, within sixty (60) days after the end of Fiscal 2019, Buyer shall prepare and deliver to the Representative a report (the “Earn-Out Report”) setting forth (a) Buyer’s calculation of the Earn-Out Payments and (b) all records and work papers reasonably necessary to compute and verify the information set forth in the Earn-Out Report. If the Representative has any objections to the calculation of the Earn-Out Payments prepared by Buyer, then the Representative will deliver a reasonably detailed written statement (the “Earn-Out Objections Statement”) describing its objections to Buyer within thirty (30) days after delivery of the Earn-Out Report. If the Representative fails to deliver an Earn-Out Objections Statement within such thirty (30) day period, then the calculation of the Earn-Out Payments set forth in the Earn-Out Report shall become final and binding on all Parties. If the Representative delivers an Earn-Out Objections Statement within such thirty (30) day period, then the Representative and Buyer will negotiate in good faith to resolve any such disputes, but if a final resolution is not obtained within thirty (30) days after the Representative has submitted the Earn-Out Objections Statement, any remaining matters which are in dispute will be resolved by the Accountants. The Accountants will prepare and deliver a written report to Buyer and the Representative and will submit a resolution of such unresolved disputes promptly, but in any event within thirty (30) days after the dispute is submitted to the Accountants. The Accountants’ determination of such unresolved disputes will be final and binding upon all Parties; provided, however, that no such determination shall be any more favorable to Buyer than is set forth in the Earn-Out Report or any more favorable to the Representative than is proposed in the Earn-Out Objections Statement. The costs, expenses and fees of the Accountants shall be borne by either the Equityholders, if the Representative’s calculation of the Earn-Out Payments has the greatest difference from the final Earn-Out Payments as determined by the Accountants under this Section 1.13 on the one hand, or Buyer, if Buyer’s calculation of the Earn-Out Payments has the greatest difference from the final Earn-Out Payments as
determined by the Accountants under this Section 1.11; otherwise, such costs, fees and expenses of the Accountants shall be borne equally by Buyer, on the one hand, and the Representative (on behalf of the Equityholders), on the other hand. Upon the Earn-Out Payments becoming final and binding in accordance with this Section 1.13, Buyer shall pay such Earn-Out Payments to the Exchange Agent or the Surviving Corporation, as applicable, in accordance with Section 1.16(d).

1.14 Management of the Post-Closing Company Business. From the Closing Date through December 31, 2019, Buyer shall operate the Company in good faith and in the long-term best interests of the Company’s business not taking into account the impact of the Earn-Out Payments. Notwithstanding the foregoing, Buyer will maintain a substantially similar operating budget and headcount for the Business during Fiscal 2019 as maintained by the Company immediately prior to the Closing Date; provided, however, that if any change in any Laws adversely affects the Business or the Company is materially missing its projections for Fiscal 2019, Buyer shall have to the right to adjust the budget and headcount as Buyer determines in good faith.

1.15 Calculations. Except as set forth on Schedule 1.15, all calculations of Working Capital under this Agreement, whether estimates or otherwise, shall be determined in accordance with GAAP; provided, however, that the calculations shall not include the effects of the implementation of ASC 606 and ASC 842. A sample calculation of Working Capital is attached hereto as Schedule 1.15. Working Capital and Cash Amount shall be calculated as of the opening of business on the Closing Date. For purposes of calculating any Earn-Out Payments, the calculations shall include the effects of the implementation of ASC 606.

1.16 Exchange of Certificates.

(a) Exchange Agent. At or before the Effective Time, Buyer or Merger Sub shall deposit, or shall cause to be deposited, for the benefit of the Equityholders, an amount in cash equal to the Estimated Cash Payment (other than the Escrow Amount, the Founders’ Escrow Amount and the Expense Amount) to which all of the Equityholders (other than the holders of In the Money Options) are entitled to receive pursuant to Section 1.7 with JPMorgan Chase Bank, N.A. (the “Exchange Agent”), for exchange in accordance with this Section 1.16(a) and enter into an exchange agent agreement to be dated as of the Effective Time by and among Buyer, the Representative and the Exchange Agent in substantially the form attached hereto as Exhibit F (the “Exchange Agent Agreement”).

(b) Exchange Procedure. As soon as practicable and no later than five (5) Business Days after the date of this Agreement, Buyer shall cause the Exchange Agent to distribute to each holder of record of a certificate or certificates representing Common Stock (collectively, the “Certificates”) and to each holder of record of In the Money Warrants, a letter of transmittal in the form attached hereto as Exhibit G1 (the “Stockholder Letter of Transmittal”) and the Company shall distribute to each holder of record of Options a letter of transmittal in the form attached hereto as Exhibit G2 (the “Optionholder Letter of Transmittal,” and, together with the Stockholder Letter of Transmittal, the “Letters of Transmittal”). Each Letter of Transmittal shall provide that each Equityholder, upon the execution or submission thereof, ratifies the adoption of this Agreement and approves the Exchange Agent Agreement and the Escrow Agreement and the appointment of the Representative. Upon surrender of a Certificate, if applicable, and a duly executed Stockholder Letter of Transmittal to the Exchange Agent by a holder of Common Stock or In the Money Warrants, the Exchange Agent shall, and Buyer shall cause the Exchange Agent to pay to such Equityholder within five (5) Business Days after the Effective Time, by check or wire transfer, at such Equityholder’s election, the portion of the Estimated Cash Payment (other than such holder’s portion, if any, of the Escrow Amount, the Founders’ Escrow Amount and the Expense Amount) that such Equityholder has the right to receive pursuant to this Agreement, less any required withholding Tax to be withheld in accordance with Section 1.10(f). Upon surrender of a duly executed Optionholder Letter of Transmittal to the Surviving Corporation by a holder of In the Money Options, the Surviving Corporation shall pay to such holder of Options, through the Company’s payroll provider or agent or as otherwise agreed upon by the Company and Buyer, on the later of five (5) Business Days or the Company’s next regular payroll payment date, in each case following the Effective Time, the portion of the Estimated Cash
Payment (other than such holder’s portion of the Escrow Amount and the Expense Amount) that such holder of Options has the right to receive pursuant to this Agreement less any required withholding Tax to be withheld in accordance with Section 1.10(f). Notwithstanding anything herein to the contrary, no payment of any portion of the Cash Payment shall be made by Buyer or the Exchange Agent to any Equityholder until such Equityholder has surrendered its Certificates or Unexercised Security, if applicable, to the Exchange Agent or to the Surviving Corporation, as the case may be, together with its duly executed Letter of Transmittal. Upon any payment pursuant to Section 1.10(4), or any Earn-Out Payment becoming final and binding, the Exchange Agent shall, and Buyer shall cause the Exchange Agent or the Surviving Corporation as the case may be, to pay to such Equityholder within fifteen (15) Business Days after the date any such payment is deemed final and binding pursuant to Section 1.11, Section 1.12 or Section 1.13, by check or wire transfer, at such Equityholder’s election, or through the applicable payroll provider or agent or as otherwise agreed upon by the Company and Buyer, the portion of any such payment that such Equityholder has the right to receive pursuant to this Agreement, less any required withholding Tax to be withheld in accordance with Section 1.10(f). No interest will be paid or accrued on the Cash Payment, any Earn-Out Payments or any other amount to be paid to the Equityholders pursuant to this Agreement.

(c) No Further Ownership Rights in Shares, Warrants or Options. From and after the Effective Time, each Certificate (other than Certificates representing Dissenting Shares) or Unexercised Security, until surrendered as contemplated by this Section 1.16, shall be deemed to represent only the right to receive upon such surrender that portion of the Cash Payment which the holder thereof has the right to receive in respect of such Certificate or Unexercised Security pursuant to this Article I, and upon release, such Equityholder’s portion of the Escrow Fund, Founders’ Escrow Fund and the Expense Fund, and such Equityholder’s portion of any Earn-Out Payments, if any. Following the Effective Time, no holder of Warrants or Options or any participant in the Company Option Plan or any other such plans, programs or arrangements shall have any right thereunder to acquire any Company Securities. That portion of the Cash Payment and Earn-out Payments, if applicable, when deposited with the Exchange Agent, the Escrow Fund and the Founders’ Escrow Fund, when deposited with the Escrow Agent, and the Expense Fund when delivered to the Representative, each in accordance with this Article I, shall be deemed to have been paid in full satisfaction of all rights pertaining to the Company Securities (including any Certificates and Unexercised Securities) of such Equityholder, other than with respect to any Stockholder asserting appraisal rights pursuant to the DGCL. At the Effective Time, the stock transfer books of the Company shall be closed, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of any Company Securities that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates or Unexercised Securities are presented to Buyer, the Surviving Corporation or the Exchange Agent for any reason, then they shall be cancelled and exchanged as provided in this Article I subject, in the case of Dissenting Shares, to Section 1.18.

(d) No Liability. At any time following twelve (12) months after the Effective Time, Buyer shall be entitled to require the Exchange Agent to deliver to any public official pursuant to any applicable abandoned property, escheat or similar Law any funds (excluding any interest received with respect thereto, which shall be delivered to the Buyer) which had been made available to the Exchange Agent and which have not been disbursed to the Equityholders. Notwithstanding anything to the contrary in this Agreement, none of Buyer, Merger Sub or the Surviving Corporation, the Company, the Exchange Agent, the Escrow Agent or any Party hereto shall be liable to any Person in respect of any amount properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. Furthermore, notwithstanding anything to the contrary contained in this Agreement, none of Buyer, Merger Sub or the Surviving Corporation shall have any liability to the Equityholders or any Person if there are any inaccuracies in the payments made in accordance with Schedule 1.17(b) or the payment instructions provided to the Company by the Representative or any Equityholder.

(e) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, then, upon receipt of (a) an affidavit of that fact from the holder claiming such Certificate to be lost, stolen or destroyed, and (b) such indemnity as Buyer may reasonably require, then the Aggregate Merger Consideration with respect to the
Company Securities, as the case may be, represented by such Certificate shall be paid as provided in this Article 1. Each lost, stolen or destroyed Certificate with respect to which any Aggregate Merger Consideration shall be paid in accordance with the provisions of this subsection (c) shall forthwith be deemed surrendered and cancelled.

1.17 Allocation Schedules.

(a) Preliminary Allocation Schedule. Attached hereto as Schedule 1.17(a) is a preliminary merger allocation schedule (the “Preliminary Allocation Schedule”) which sets forth, as of the date hereof, with respect to each Equityholder (i) the preliminary allocation of the aggregate of the Aggregate Merger Consideration to which such Equityholder is entitled, (ii) the preliminary allocation of the Estimated Cash Payment to which such Equityholder is entitled at Closing, (iii) his, her or its interest in the Escrow Fund (assuming there are no adjustments pursuant to Article 1) and the Founders’ Escrow Fund, (iv) his, her or its interest in the Expense Fund (assuming there are no expense or costs incurred by the Representative), and (v) the Fully-Diluted Pro Rata Percentage for each Equityholder.

(b) Final Allocation Schedule. Not less than two (2) Business Days prior to the Closing Date, the Company will deliver to Buyer a spreadsheet in substantially the form of Schedule 1.17(a) setting forth with respect to each Equityholder (i) such Equityholder’s name and address as of the Closing Date, (ii) the number of shares and stock certificate numbers of the issued and outstanding Company Securities, including shares subject to Options or Warrants held by such Equityholder as of the Closing Date and identifying which such Company Securities are In the Money Warrants and In the Money Options, (iii) the portion of the Aggregate Merger Consideration payable to such Equityholder in accordance with the provisions hereof, (iv) the Cash Payment payable to such Equityholder in accordance with the provisions hereof, (v) his, her or its interest in the Escrow Fund, the Founders’ Escrow Fund, the Expense Fund and any Earn-Out Payments, and (vi) the tax reporting character of the payment to such person (e.g., Form 1099 or W-2) and the amount of Taxes to be withheld with respect to such Person, if any, in each case calculated based on the Company’s good faith estimate, as of the date of delivery of the Allocation Schedule, of the adjustments pursuant to Article 1 and assuming no exercise of appraisal rights pursuant to the DGCL (such spreadsheet, the “Allocation Schedule”). Upon receipt by Buyer and approval thereof (which will not be unreasonably withheld) within two (2) Business Days of receipt by Buyer, the Allocation Schedule will be appended to this Agreement as Schedule 1.17(b) hereto, and appended as an appropriate numbered schedule to the Exchange Agent Agreement and the Escrow Agreement, as applicable, and shall be in the form requested by the Escrow Agent and Exchange Agent.

1.18 Appraisal Rights. Notwithstanding anything in this Agreement to the contrary, any Common Stock outstanding immediately prior to the Effective Time and held by a holder who is entitled to exercise and properly exercises such holder’s appraisal rights (“Dissenting Shares”) pursuant to, and who complies in all respects with Section 262 of the DGCL or any successor provision, shall not be converted into, or represent the right to receive, the Aggregate Merger Consideration, but such holder shall instead be entitled to receive payment of the fair value of such holder’s Dissenting Shares in accordance with Section 262 of the DGCL; provided, that if any such holder fails to perfect or effectively withdraws or loses such holder’s appraisal rights, then such Dissenting Shares shall thereupon be treated as if they had been converted as of the Effective Time into the right to receive the Aggregate Merger Consideration, as adjusted pursuant to Section 1.10 to which such holder is entitled, without interest or dividends thereon, upon the surrender of the Certificate(s) which formerly represented such Dissenting Shares, in the manner provided in Section 1.10. Prior to the Effective Time, the Company shall give Buyer prompt notice of any written demands complying with Section 262 of the DGCL received by the Company to exercise appraisal rights with respect to any Company Securities, withdrawals or attempted withdrawals of such demands and any other written instrument served pursuant to the DGCL and received by the Company relating to appraisal rights. After the Effective Time, Buyer and/or the Surviving Corporation shall give the Representative prompt notice of any written demands complying with Section 262 of the DGCL received by Buyer and/or the Surviving Corporation to exercise appraisal rights with respect to any Company Securities, withdrawals or attempted withdrawals of such demands and any other written instrument served pursuant to the
DGCL and received by Buyer and/or the Surviving Corporation relating to appraisal rights. The Company (prior to the Effective Time), the Surviving Corporation (after the Effective Time), the Representative, and Buyer shall be entitled to participate in all negotiations and Proceedings with respect to demands for appraisal rights under the DGCL. The Company, prior to the Effective Time, and the Representative, after the Effective Time, shall have the right in its sole discretion to conduct the defense of, any such demands; provided, however, that neither the Company nor the Representative shall voluntarily make any payment with respect to, or settle or offer to settle, any such demand for payment, except with the prior written consent of Buyer (which will not be unreasonably withheld, conditioned or delayed). Buyer Indemnitees shall be entitled to recover any payment or payments in respect of any Dissenting Shares in excess of the consideration that otherwise would have been payable in respect of such Dissenting Shares in accordance with this Agreement (“Dissenting Share Payments”) pursuant to Article 8 hereof.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES CONCERNING TRANSACTION

2.1 Representations and Warranties of Stockholders. Each Stockholder, individually and severally, and not jointly and severally, represents and warrants to Buyer and Merger Sub that the statements contained in this Section 2.1 are true and correct as of the date of this Agreement and the Closing Date, except as set forth in the corresponding section of the Disclosure Schedule.

(a) Authorization of Transaction. Such Stockholder, if an entity, is duly formed, validly existing and in good standing under the Laws of the State of its formation. Such Stockholder has full power, authority and legal capacity to execute and deliver this Agreement and the Ancillary Agreements to which such Stockholder is a party and to perform such Stockholder’s obligations hereunder and thereunder. If such Stockholder is an entity, then the execution and delivery by such Stockholder of this Agreement and the Ancillary Agreements to which such Stockholder is or will be a party and the performance by such Stockholder of the transactions contemplated hereby and thereby have been duly approved by all requisite action of such Stockholder. Assuming the due authorization, execution and delivery of this Agreement and the Ancillary Agreements by the other parties hereto and thereto, this Agreement and each Ancillary Agreement to which such Stockholder is or will be a party constitute, or will constitute when executed and delivered by such Stockholder, the valid and legally binding obligation of such Stockholder, enforceable against such Stockholder in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies. Other than as set forth on Schedule 2.1 of such Stockholder’s Joinder, such Stockholder is not required to give any notice to, make any filing with, or obtain any Consent of any Governmental Body or any other Person in order to consummate the transactions contemplated by this Agreement or the Ancillary Agreements to which such Stockholder is or will be a party.

(b) Non-contravention. Neither the execution and the delivery of this Agreement and the Ancillary Agreements to which such Stockholder is or will be a party, nor the consummation of the transactions contemplated hereby and thereby, will (i) violate or conflict with any Law or Order to which such Stockholder is subject, (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any Contract to which such Stockholder is a party or by which such Stockholder is bound or to which such Stockholder ‘s assets are subject, (iii) result in the imposition or creation of a Lien upon or with respect to the Company Securities, or (iv) violate any provision of the Organizational Documents of such Stockholder, if an entity.

(c) Brokers’ Fees. Such Stockholder has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement or any Ancillary Agreement.

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(d) **Company Securities.** Such Stockholder holds of record and owns beneficially and has good and indefeasible title to the number and type of Company Securities set forth next to such Stockholder’s name in Schedule 1.17(a), free and clear of any Liens other than any restriction on transfer arising under applicable securities laws and any restrictions set forth in the agreements set forth in Schedule 2.4 of such Stockholder’s Joinder. Such Stockholder is not a party to, and such Stockholder’s Company Securities are not subject to, any option, warrant, purchase right or other Contract that could require such Stockholder to sell, transfer, or otherwise dispose of any Company Securities (other than this Agreement). Other than that certain Voting Agreement by and between the Company and the stockholders party thereto dated as of August 30, 2017, such Stockholder is not a party to any voting trust, proxy or other Contract with respect to the voting of any Company Securities.

(e) **Litigation.** Such Stockholder is not engaged in or a party to, to the Knowledge of such Stockholder, threatened, with any complaint, charge, Proceeding, Order or other process or procedure for settling disputes or disagreements with respect to the Company or the transactions contemplated by this Agreement, and such Stockholder has not received written or, to the Knowledge of such Stockholder, oral notice of a claim or notice of a claim or dispute that is reasonably likely to result in any such complaint, charge, Proceeding, Order or other process or procedure for settling disputes or disagreements with respect to the Company or the transactions contemplated by this Agreement.

2.2 **Representations and Warranties of Buyer and Merger Sub.** Buyer and Merger Sub, jointly and severally, represent and warrant to the Stockholders and the Company that the statements contained in this Section 2.2 are true and correct as of the date of this Agreement and the Closing Date.

(a) **Organization of Buyer.** Buyer is a corporation duly formed, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub is a corporation duly formed, validly existing and in good standing under the Laws of the State of Delaware.

(b) **Authorization of Transaction.** Buyer and Merger Sub each have full power and authority to execute and deliver this Agreement and the Ancillary Agreements to which each is or will be a party and to perform their obligations hereunder and thereunder. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which Buyer is or will be a party and the performance by Buyer and Merger Sub of the transactions contemplated hereby and thereby have been duly approved by all requisite action of Buyer and Merger Sub. Assuming the due authorization, execution and delivery of this Agreement and the Ancillary Agreements by the other parties thereto, this Agreement and each Ancillary Agreement to which Buyer or Merger Sub or the other parties thereto, this Agreement and each Ancillary Agreement to which Buyer and Merger Sub is or will be a party constitute, or will constitute when executed and delivered by Buyer or Merger Sub as the case may be, the valid and legally binding obligation of Buyer or Merger Sub, as applicable, enforceable against Buyer or Merger Sub, as applicable, in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors generally and by the availability of equitable remedies. Except as required to comply with applicable federal and state securities Laws, Buyer is not required to give any notice to, make any filing with, or obtain any Consent of any Governmental Body or any other Person in order to consummate the transactions contemplated by this Agreement or the Ancillary Agreements to which Buyer is or will be a party.

(c) **Non-contravention.** Neither the execution and the delivery of this Agreement nor the Ancillary Agreements to which Buyer or Merger Sub is or will be a party, nor the consummation of the transactions contemplated hereby and thereby, will (i) violate or conflict with any Law or Order to which Buyer or Merger Sub is subject, (ii) violate any provision of the Organizational Documents of Buyer or Merger Sub or (iii) constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any Contract to which Buyer or Merger Sub is a party or by which it is bound or to which any of its assets is subject.
Brokers’ Fees. Buyer and Merger Sub do not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which any Equityholder could become liable or obligated.

Investment. Buyer is not acquiring the Company Securities with a view to or for sale in connection with any distribution thereof within the meaning of the Securities Act.

Litigation. Buyer and Merger Sub are not engaged in or a party to or, to the Knowledge of Buyer, threatened with any complaint, charge, Proceeding, Order or other process or procedure for settling disputes or disagreements, and neither Buyer nor Merger Sub has received written or, to the Knowledge of Buyer, oral notice of a claim or dispute that is reasonably likely to result in any such complaint, charge, Proceeding, Order or other process or procedure for settling disputes or disagreements.

Cash Resources. Buyer has and will have at the Closing sufficient cash resources to enable Buyer to timely perform its obligations hereunder, including (a) paying the Aggregate Merger Consideration, and (b) paying in full all fees, costs and expenses payable by Buyer in connection with this Agreement and the transactions contemplated by this Agreement.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES CONCERNING THE COMPANY

The Company represents and warrants to Buyer and Merger Sub that the statements contained in this Article 3 are true and correct as of the date of this Agreement and the Closing Date, except as set forth in the disclosure schedule delivered by the Company to Buyer on the date hereof (the “Disclosure Schedule”).

3.1 Organization, Qualification, and Power. Section 3.1(a) of the Disclosure Schedule sets forth the jurisdiction of incorporation or formation of the Company and each state or other jurisdiction in which the Company is licensed or qualified to do business. The Company is duly organized, validly existing and in good standing under the Laws of Delaware. The Company is duly authorized to conduct its business as currently conducted and is in good standing under the Laws of each jurisdiction where such qualification is required, except where the failure to be so authorized or in good standing would not reasonably be expected to be material to the Company. The Company has full corporate power and authority necessary to carry on the businesses in which it is currently engaged and to own, lease and use the properties owned, leased and used by it. Section 3.1(b) of the Disclosure Schedule lists the members of the board of directors and the officers of the Company. The Company has made available to Buyer copies of the Organizational Documents, the minute book and stock record books for the Company, each of which is correct and complete in all material respects. The Company is not in default under or in violation of any provision of its Organizational Documents.

3.2 Subsidiaries. The Company has never and does not currently own or control, directly or indirectly, any interest in any other corporation, partnership, trust, joint venture, limited liability company, association, or other business entity.

3.3 Authorization of Transaction. (a) The Company has full corporate power, authority and legal capacity to execute and deliver the Agreement, the Escrow Agreement and the other Ancillary Agreements to which it is or will be a party and to perform its obligations hereunder and thereunder subject only to receipt of the Requisite Vote. The execution and delivery by the Company of the Agreement, the Escrow Agreement, and the other Ancillary Agreements to which it is or will be a party and the performance by the Company of the transactions contemplated hereby and thereby have been duly approved by all requisite corporate action of the Company. Assuming the due authorization, execution and delivery of this Agreement, the Escrow Agreement, and the other Ancillary Agreements by the other parties hereto and thereto, this Agreement, the Escrow Agreement, and each
other Ancillary Agreement to which the Company is or will be a party constitute the valid and legally binding obligation of the Company, enforceable against the Company in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors generally and by the availability of equitable remedies.

(b) The board of directors of the Company, at a meeting duly called and held, has unanimously adopted resolutions (i) determining that this Agreement and the transactions contemplated hereby, including the Merger, are advisable to and in the best interest of the Stockholders, (ii) approving this Agreement, the Escrow Agreement, and the other Ancillary Agreements to which it is or will be a party, and the transactions contemplated hereby and thereby, including the Merger, which approval satisfies in full the requirements of the DGCL that the Agreement be approved by the Company’s board of directors, and (iii) recommending the approval and adoption of this Agreement by the Stockholders.

(c) Approval of this Agreement requires the affirmative vote or written consent of Stockholders owning sixty percent (60%) of the outstanding Common Stock (the “Requisite Vote”). The Requisite Vote is the only vote or written consent of the holders of Company Securities necessary to approve and adopt this Agreement, the Merger and the other transactions contemplated hereby.

3.4 Capitalization.

(a) The Company Securities represent 100% of the outstanding stock or other ownership interests in the Company. All of the Company Securities have been duly authorized, are validly issued, fully paid, and non-assessable and have been issued without violation of any preemptive right or other right to purchase. Section 3.4(a) of the Disclosure Schedule lists all of the Company’s issued and authorized stock and the record owner of such stock. Except as set forth on Section 3.4(a) of the Disclosure Schedule, there are no other stock or other ownership interests in the Company or outstanding securities convertible or exchangeable into stock or other ownership interests of the Company, and there are no options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, calls, puts, rights of first refusal or other Contracts that could require the Company to issue, sell or otherwise cause to become outstanding or to acquire, repurchase or redeem stock or other ownership interests in the Company. There are no outstanding or authorized equity appreciation, phantom equity, profit participation or similar rights with respect to the Company. Except as set forth on Section 3.4(a) of the Disclosure Schedule, there are no voting trusts, proxies or other Contracts with respect to the voting of the stock or other ownership interests of the Company.

(b) The authorized capital of the Company consists, immediately prior to the date of this Agreement of 14,000,000 shares of Common Stock, 12,483,090 shares of which are issued and outstanding immediately prior to the date of this Agreement, and as of the Closing Date the number of shares of Common Stock issued and outstanding will not exceed 12,483,090. As of the date of this Agreement, the number of Fully-Diluted Shares is equal to 13,048,918 and as of the Closing Date the number of Fully-Diluted Shares will not exceed 13,048,918.

(c) No Equityholder has made a loan to, or borrowed money from, the Company since January 1, 2015 and the Company has no outstanding liabilities to any Equityholder in respect of any loan or borrowing.

(d) As of the date of this Agreement, 112,500 shares of Common Stock are issuable pursuant to the exercise of outstanding Warrants, 453,328 shares of Common Stock are issuable pursuant to the exercise of outstanding Options issued under the Company Option Plan, and 210,546 shares of Common Stock remain available for issuance under the Company Option Plan.

3.5 Non-contravention. Neither the execution and delivery of this Agreement and the Ancillary Agreements to which the Company is or will be a party, nor the consummation of the transactions contemplated hereby or thereby, will (i) violate or conflict with any Law or Order to which the Company is subject, (ii) violate or conflict with any provision of the Organizational Documents of the Company, or (iii) conflict with, result in a breach of,
constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice, Consent or payment under any Material Contract or Permit to which the Company is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Lien upon any of its assets). Except as set forth on Section 3.5 of the Disclosure Schedule, the Company is not required to give any notice to, make any filing with, or obtain any Consent of any Governmental Body or any other Person in order to consummate the transactions contemplated by this Agreement or the Ancillary Agreements to which the Company is or will be a party.

3.6 **Brokers’ Fees.** Except as set forth on Section 3.6 of the Disclosure Schedule, the Company does not have any liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement.

3.7 **Assets.**

(a) The Company has good and marketable title to, or a valid leasehold interest or license in, all tangible properties and assets used by it, located on its premises, or shown on the Most Recent Balance Sheet (other than inventory sold in the Ordinary Course of Business), free and clear of all Liens, except for Permitted Liens. The assets, properties and rights owned, leased, or licensed by the Company are all the assets, properties and rights used by the Company in the operation of the Business or necessary to operate the Business as currently conducted consistent with past practice.

(b) The buildings, machinery, equipment and other tangible assets that the Company owns or leases have been maintained in accordance with normal industry practice, are in good operating condition and repair (subject to normal wear and tear) and are suitable for the purposes for which they are presently used.

3.8 **Financial Statements; Interim Conduct; Books and Records; Bank Accounts.**

(a) Attached to Section 3.8(a) of the Disclosure Schedule are correct and complete copies of the following financial statements of the Company (collectively, the “Financial Statements”): (i) audited balance sheets, statements of income, stockholders’ equity and cash flows as of and for the fiscal years ended December 31, 2016 and December 31, 2017 (the “Most Recent Fiscal Year End”); and (ii) unaudited consolidated balance sheets, statements of income, stockholders’ equity and cash flows (the “Most Recent Financial Statements”) as of and for the eleven (11) month period ended November 30, 2018 (the “Most Recent Fiscal Month End”). Except as set forth on Section 3.8(a) of the Disclosure Schedule, the Financial Statements are true and correct and have been prepared consistent in all material respects with the books and records of the Company, have been prepared in accordance with GAAP consistently applied, and present fairly in all material respects the financial condition, results of operation, changes in equity and cash flow of the Company as of and for their respective dates and for the periods then ending; provided, however, that the Most Recent Financial Statements are subject to normal, recurring year-end adjustments and lack notes (none of which will be material individually or in the aggregate). An unaudited balance sheet, statement of income, stockholders’ equity and cash flows as of and for the fiscal year ended December 31, 2018 (the “Unaudited 2018 Financial Statements”) will be provided to Buyer pursuant to Section 7.1(r). At the time of delivery and as of the Closing Date, the Unaudited 2018 Financial Statements will be prepared in good faith, consistent with the Company’s current practice and consistent in all material respects with the books and records of the Company, prepared in accordance with GAAP consistently applied, and present fairly in all material respects the financial condition, results of operation, changes in equity and cash flow of the Company as of and for the date and for the period then ending; provided, however, that the Unaudited 2018 Financial Statements are subject to normal, recurring year-end adjustments and lack notes (none of which will be material individually or in the aggregate; further provided, that, to the extent there is a variance of GAAP in the Unaudited 2018 Financial Statements, the Company will provide a description of such variance to Buyer (subject to any qualifications set forth on Section 3.8(a) of the Disclosure Schedule).
Since the Most Recent Fiscal Year End, the business of the Company has been conducted in the Ordinary Course of Business in all material respects, and there has not been any Material Adverse Change and no event has occurred which could reasonably be expected to result in a Material Adverse Change. Without limiting the generality of the foregoing, except as set forth on Section 3.8(b) of the Disclosure Schedule, since the Most Recent Fiscal Year End the Company has not:

(i) sold, leased, transferred or assigned any assets or property (tangible or intangible) with a value in excess of $50,000, other than sales of products of the Company in the Ordinary Course of Business;

(ii) experienced any damage, destruction or loss (whether or not covered by insurance) to its tangible assets or property in excess of $50,000;

(iii) received notice from any Person regarding the acceleration, termination, material modification, or cancelation of any Material Contract;

(iv) issued, created, incurred or assumed any Debt involving more than $50,000;

(v) forgiven, canceled, compromised, waived or released any Debt owed to it or any material right or material claim;

(vi) issued, sold or otherwise disposed of any of its stock or other ownership interests, or granted any options, warrants or other rights to acquire (including upon conversion, exchange or exercise) any of its stock or other ownership interests or declared, set aside, made or paid any dividend or distribution with respect to its stock or other ownership interests or redeemed, purchased or otherwise acquired any stock or other ownership interest or amended or made any change to any of its Organizational Documents or made any other payment to its stockholders (other than compensation to the stockholders who are employees of the Company in the Ordinary Course of Business);

(vii) granted any increase in salary or bonus or otherwise increased the compensation or benefits payable or provided to any director, officer, employee, consultant, advisor, or agent except wage or salary increases set forth on Section 3.8(b)(vii) of the Disclosure Schedule;

(viii) engaged in any promotional, sales, discount, or other similar activity that has or could reasonably be expected to have the effect of accelerating sales prior to the Closing that would otherwise be expected to occur subsequent to the Closing or delay any sales that would otherwise be expected to occur prior to the Closing;

(ix) made any commitment outside of the Ordinary Course of Business or in excess of $50,000 in the aggregate for capital expenditures to be paid after the Closing or failed to incur capital expenditures in accordance with its capital expense budget;

(x) instituted any material change in its accounting practices or methods, or cash management practices;

(xi) taken or omitted to take any action which could be reasonably anticipated to have a Material Adverse Effect;

(xii) made, changed or rescinded any Tax election, settled or compromised any Tax liability, amended any Tax Return, took any action, omitted to take any action or entered into any other transaction that would have the effect of materially increasing the Tax liability or materially reducing any Tax assets of Buyer in respect of any taxable period ending after the Closing Date;

(xiii) collected its accounts receivable or paid any accrued liabilities or accounts payable or prepaid any expenses or other items, in each case other than in the Ordinary Course of Business;

(xiv) entered into any transaction with any Affiliate; or

(xv) agreed or committed to any of the foregoing.
(c) All notes and accounts receivable reflected on the Most Recent Financial Statements, and all accounts receivable of the Company generated since the Most Recent Fiscal Month End (the “Receivables”), constitute bona fide receivables resulting from the sale of inventory, services or other obligations in favor of the Company in the Ordinary Course of Business and are valid and enforceable claims. To the Company’s Knowledge, the Receivables are not subject to any pending or threatened defense, counterclaim, right of offset, returns, allowances or credits, except to the extent reserved against the accounts receivable. Subject to any specific bad debt reserves reflected on the Most Recent Financial Statements, the receivables are collectible in full. The reserves against the accounts receivable for returns, allowances, chargebacks and bad debts are commercially reasonable and have been determined in accordance with GAAP, consistently applied in accordance with past custom and practice.

(d) The accounts payable of the Company reflected on the Most Recent Financial Statements arose from bona fide transactions in the Ordinary Course of Business, and all such accounts payable have either been paid, are not yet due and payable in the Ordinary Course of Business, or are being contested by the Company in good faith.

(e) The books of account, minute books and stock record books of the Company, all of which have been made available to Buyer, are accurate and complete in all material respects and have been maintained in accordance with reasonable business practices and Laws. On the Closing Date, such books, registers and records will be in the possession of the Company. The minute books of the Company contain true and complete records of all meetings and other material actions, including actions by vote or written consent of the board of directors (or equivalent body) of the Company and the stockholders of the Company.

(f) Section 3.8(f) of the Disclosure Schedule contains an accurate, correct and complete list of (i) the names and addresses of all banks, commercial lending institutions and other financial institutions in which the Company has an account, deposit, safe-deposit box, line of credit or other loan facility or relationship, or lock box or other arrangement for the collection of accounts receivable, with the names of all Persons authorized to draw or borrow thereon or to obtain access thereto; and (ii) the credit card issuers with whom the Company has an account and the names of all Persons authorized to use such accounts or who have access thereto. There are no automatic, periodic or scheduled withdrawals or debits with respect to any of the bank or corporate accounts except as set forth on Schedule 3.8(f) of the Disclosure Schedule.

(g) The Company has not received any grants, subsidies or other financial assistance from a Governmental Body except as listed in Section 3.8(g) of the Disclosure Schedule.

3.9 Undisclosed Liabilities. The Company does not have any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), except for liabilities that (a) are accrued or reserved against in the Most Recent Financial Statements, (b) were incurred subsequent to the Most Recent Fiscal Month End in the Ordinary Course of Business, (c) result from the obligations of the Company under this Agreement or the Ancillary Agreements, or (d) liabilities and obligations pursuant to any Contract to which the Company is a party or is otherwise bound which arose in the Ordinary Course of Business and did not result from any default, tort, breach of contract or breach of warranty.

3.10 Legal Compliance.

(a) Except as set forth on Section 3.10(a) of the Disclosure Schedule, the Company has complied and is in compliance, in each case in all material respects, with all Laws, and no Proceeding has been filed or to the Company’s Knowledge been commenced or threatened alleging any failure so to comply. Since January 1, 2013, the Company has not received any written notice or communication from any Governmental Body, commercial or private third party payor or insurance plan, or other Person alleging any non-compliance in any material respect with the foregoing. Without limiting the foregoing, the Company has complied and is in compliance, in each case in all material respects, with all Environmental, Health, and Safety Requirements.
(b) **Section 3.10(b) of the Disclosure Schedule** sets forth a correct and complete list all Permits held by the Company ("Permits"). Such Permits (i) constitute all Permits necessary for the operation of the business of the Company, and (ii) are in full force and effect. The Company is in compliance in all material respects with each such Permit. No condition exists that with notice or lapse of time or both would constitute a default under any Permit. No Proceeding is pending or, to the Company’s Knowledge, has been threatened that would reasonably be expected to lead to the revocation, amendment, failure to renew, limitation, suspension, withdrawal, termination, modification or material restriction of any Permit.

(c) Neither the Company nor any of its officers, directors, agents, employees, or any other Persons has, on behalf of the Company, (i) offered or made any illegal payment or provided any unlawful compensation (whether in money, property or services) or gifts to, or for the private use of, any Government Body or any government official, officer, employee, or agent of any Governmental Body, or any employee, customer or supplier of the Company, or (ii) offered, paid, solicited, accepted or received any unlawful remuneration, contributions, payments, expenditures or gifts; to or from any (1) referral source to obtain any patient referrals or other business or payments, or (2) referral recipient to make or deliver any patient or other health care business referrals, no Proceeding has been filed or commenced alleging any such remuneration, payments, contributions or gifts.

3.11 **Tax Matters.**

(a) The Company has filed with the appropriate taxing authorities all income and other material Tax Returns that it was required to file. All such Tax Returns are correct and complete in all material respects. All Taxes due and owing by the Company (whether or not shown on any Tax Return) have been paid. The Company is not currently the beneficiary of any extension of time (other than automatic extensions) within which to file any Tax Return or pay any Tax. There are no Liens for Taxes (other than Taxes not yet due and payable) upon the Company Securities or any of the assets of the Company. The Company uses the accrual method of accounting for Tax purposes.

(b) Adequate reserves and accruals have been established to provide for the payment of all Taxes (excluding any employment Taxes arising in connection with the transactions contemplated by this Agreement) which are not yet due and payable with respect to the Company.

(c) No deficiency or proposed adjustment for any amount of Tax has been proposed, asserted or assessed in writing by any taxing authority against the Company that has not been paid, settled or otherwise resolved. There is no Proceeding or audit now pending, proposed or, to the Knowledge of the Company, threatened in writing against the Company or concerning the Company with respect to any Taxes. The Company has not been notified in writing by any taxing authority that any issues have been raised with respect to any Tax Return. There has not been, within the past five (5) calendar years, an examination or written notice of potential examination of the Tax Returns filed with respect to the Company by any taxing authority.

(d) All material Taxes that are required to be withheld or collected by the Company, including, but not limited to, Taxes arising as a result of payments (or amounts allocable) to foreign persons or to employees, agents, contractors or stockholders of the Company, have been duly withheld and collected and, to the extent required, have been properly paid or deposited as required by Laws.

(e) No written claim has ever been made by any taxing authority in a jurisdiction where the Company does not file Tax Returns that it is or may be subject to taxation by that jurisdiction.

(f) The Company is not a party to any Tax allocation, sharing, indemnity, or reimbursement agreement or arrangement, in each case, the principal purpose of which relates to the sharing, indemnification or reimbursement of Taxes, and are not liable for the Taxes of any other Person as a transferee or successor, by Contract or otherwise.
(g) The Company will not be required as a result of (i) a change in method of accounting or use of an improper method of accounting requested or initiated prior to the Closing for a taxable period ending on or prior to the Closing Date, (ii) any “closing agreement,” as described in Section 7121 of the Code (or any corresponding provision of state, local or foreign Law) executed on or prior to the Closing Date, (iii) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local, or non-U.S. income Tax law), (iv) any installment sale or open transaction disposition made on or prior to the Closing Date, (v) the receipt of any prepaid revenue on or prior to the Closing Date, or (vi) election under Section 108(i) of the Code, to include any item of income or exclude any item of deduction for any taxable period (or portion thereof) beginning after the Closing Date that would not have otherwise so been included or excluded as the case may be.

(h) The Company is not a “United States real property holding corporation” within the meaning of Section 897(c)(2) of the Code.

(i) The Company has provided or made available to Buyer correct and complete copies of all income and other material Tax Returns filed by or with respect to any of them for the taxable years ending on or after December 31, 2014, and Section 3.11(i) of the Disclosure Schedule indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. The Company has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to the payment of any Tax or any Tax assessment or deficiency, which waiver or extension remains in effect. The Company has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Section 6662 of the Code.

(j) There is no Contract to which the Company is a party that will, individually or collectively, result in the payment of any amount that would not be deductible by reason of Section 280G (as determined without regard to Section 280G(b)(4) of the Code).

(k) The Company (i) has not been a member of an Affiliated Group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company) or (ii) does not have any Liability for the Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or non-U.S. law).

(l) The Company has not distributed the stock of another Person, or had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 of the Code.

(m) The Company has not been a party to any “reportable transaction,” as defined in Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

(n) The Company does not have a permanent establishment (within the meaning of an applicable Tax treaty) or otherwise has an office or fixed place of business in a country other than the country in which it is organized.

(o) Notwithstanding any other provision in this Agreement to the contrary, the Company makes no representations regarding (i) the amount or availability of any Tax attributes (including net operating loss carry-forwards, asset Tax basis and general business Tax credits) of the Company after the Closing or (ii) any Tax period that begins after the Closing Date, with the exception of the representations in Section 3.11(g).

3.12 **Real Property.**

(a) The Company does not and has never owned any real property.
Section 3.12 of the Disclosure Schedule sets forth the address of each parcel of Leased Real Property, and a true and complete list of all Leases for each parcel of Leased Real Property. The Company has made available to Buyer a true and complete copy of each Lease, and in the case of any oral Lease, a written summary of the material terms of such Lease.

(c) Subject to the respective terms and conditions in the Leases, the Company is the sole legal and equitable owner of the leasehold interest in the Leased Real Property, free and clear of all Liens (other than Permitted Liens).

(d) With respect to each parcel of Leased Real Property: (i) to the Knowledge of the Company, there are no pending or threatened condemnation Proceedings, suits or administrative actions relating to any parcel of Leased Real Property or other matters affecting adversely the current use or occupancy thereof; (ii) to the Knowledge of the Company, the operation of the Leased Real Property in the manner in which it is now owned and operated comply with all zoning, building, use, safety or other similar Laws; (iii) the Company has not received any notice of any special Tax, levy or assessment for benefits or betterments that affect any parcel of Leased Real Property and, to the Knowledge of the Company, no such special Taxes, levies or assessments are pending or contemplated; (iv) there are no Contracts to which the Company is a party or is otherwise bound granting to any third party or parties the right of use or occupancy of any parcel of Leased Real Property, and there are no third parties (other than the Company) in possession of any such parcel; and (v) each parcel of Leased Real Property abuts on and has adequate direct vehicular access to a public road and to the Knowledge of the Company there is no pending or threatened termination of such access. The Leased Real Property comprises all of the real property used in the business of the Company, and the Company is not a party to any Contract or option to purchase any real property or any portion thereof or interest therein.


(a) Company Intellectual Property. Section 3.13(a) of the Disclosure Schedule sets forth a true, correct and complete list of the following Company-Owned IP Rights: (i) issued Patents and pending applications for Patents; (ii) Trademark registrations and pending applications for Trademarks; and (iii) issued Copyrights and pending applications for Copyrights. The Company has paid all applicable registration, maintenance and renewal fees necessary to maintain the registrations for any Company-Owned IP Rights or Company-Owned IP Rights subject to a pending application. The Company has made all necessary filings currently required to be filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining and perfecting such Company-Owned IP Rights and recording the ownership interests of the Company therein. All Company-Owned IP Rights that are registered are valid and enforceable. To the Knowledge of the Company, all Company Owned IP Rights that are not subject to a pending application or issued registrations are, to the extent permitted under applicable law, enforceable. There are no outstanding deadlines of any patent, copyright or trademark office (or any analogous office or registry anywhere in the world) in relation to such listed registrations or applications that will expire within sixty (60) days of the Closing Date.

(b) Title; Right to Use. The Company owns and has all right, title and interest in and to each item of Company-Owned IP Rights, free and clear of any Liens other than Permitted Liens and Intellectual Property Licenses granted by the Company, and has valid right to use all other Company IP Rights, except that the foregoing representation does not pertain to any interference, infringement, misappropriation or violation of any Intellectual Property by the Company. The Company is not a party to or otherwise bound by any settlement or consent agreement, covenant not to sue, non-assertion assurance, release or other similar agreement that could reasonably be expected, individually or in the aggregate, to materially and adversely affect the Company’s rights to own, use, make, transfer, encumber, assign, license, distribute, convey, sell or otherwise exploit any Company IP Rights.
(c) **Sufficiency.** The Company IP Rights are sufficient for the conduct of the business of the Company as currently conducted. The Company has taken reasonable actions to maintain, police and protect the material Company-Owned IP Rights.

(d) **Non-Infringement of Third-Party Intellectual Property Rights.** The operation of the business of the Company as such business is currently conducted, does not infringe, misappropriate or otherwise violate, nor since April 15, 2011, has not infringed, misappropriated or otherwise violated any Third-Party IP Rights. As of the date hereof, there are no pending, and to the Knowledge of the Company, no threatened Proceedings against the Company, and since April 15, 2011, the Company has not received any written notice, alleging it is infringing, misappropriating, or otherwise violating any Third-Party IP Rights.

(e) **Non-Infringement By Third Parties.** To the Knowledge of the Company, there is no unauthorized use, unauthorized disclosure, infringement, misappropriation or other violation of any Company-Owned IP Rights, by any third party. As of the date hereof, the Company has not instituted any Proceedings for infringement, misappropriation or other violation of any Company-Owned IP Rights.

(f) **Founders.** All rights in, to and under all Intellectual Property created by the Company’s founders for or on behalf or in contemplation of the Company (i) prior to the inception of the Company or (ii) prior to their commencement of employment with the Company have been, to the extent permitted by applicable Law, duly and validly assigned to the Company.

(g) **Contributors.** All Company-Owned IP Rights were developed by (i) employees of the Company within the scope of their employment; or (ii) independent contractors who have entered into written agreements with the Company that assigned (to the extent permitted by applicable Law) to the Company all right, title and interest in and to any Intellectual Property developed for the Company that restricts or limits in any way the scope of the Company-Owned IP Rights or requires such employee or independent contractor to transfer, assign or disclose information concerning the Company-Owned IP Rights to anyone other than the Company. Without limiting the foregoing, the Company has obtained written and enforceable proprietary information and invention disclosure and Intellectual Property rights assignments from all current and former Authors in the form made available to Buyer. The Company has provided to Buyer copies of all such forms currently and historically used by the Company.

(h) **Government or University Funding.** No funding, facilities or personnel of any Governmental body or any university, college, other educational institution or research center were used to directly or indirectly develop any Company-Owned IP Rights.

(i) **No Impact on Company-Owned IP Rights.** Neither the execution and delivery or effectiveness of this Agreement (or any Ancillary Agreement), the performance of the Company’s obligations under this Agreement, consummation by the Company of the transactions contemplated hereby (or any Ancillary Agreement) will, with or without notice or lapse of time, result in, or give any Person the right or option to declare or cause: (i) a loss of, Lien on or the forfeiture or termination of, or give rise to a right of forfeiture or termination of any Company-Owned IP Right (including any grant, assignment or transfer to any other Person of any license or other right or interest under, to or in); (ii) payment obligations by the Company in excess of such payment obligations had such transactions not occurred, nor require the consent of any other Person, in order for Company to use or exploit the Company-Owned IP Rights to the same extent as the Company was permitted before the date hereof; or (iii) as a result of any Contract to which the Company is bound, the grant, assignment or transfer to any other Person of any license or other right or interest under, to or in any Intellectual Property of Buyer or any Affiliate of Buyer (other than the Company post-Closing).
Proprietary Information. The Company has taken commercially reasonable actions to protect and preserve the confidentiality of all material Proprietary Information included in the Company IP Rights. To the Knowledge of the Company, all use and/or disclosure of Confidential Information by or to a third party has been pursuant to the terms of a written Contract between the Company and such third party. The Company has not breached any Contracts of non-disclosure or confidentiality.

No Harmful Code. All of the Company Software complies with the applicable warranty and other contractual commitments relating to its use, functionality, or performance. The Company Software does not contain any time bomb, virus, software lock, drop-dead device, malicious logic, worm, Trojan horse, or spyware, that is capable of (or that allows any untrusted party to be capable of) accessing, modifying, deleting, damaging, disabling, deactivating, interfering with or otherwise harming any computers, networks, data or other electronically stored information, or computer programs or systems.

Source Code. The Company has not disclosed, delivered, licensed or made available to any escrow agent or other Person, agreed to disclose, deliver, license or make available to any escrow agent or other Person, any source code for any Company Software, except for disclosures to employees or contractors under written agreements that prohibit use or disclosure except in the performance of services to Company.

Open Source Materials. Section 3.13(m) of the Disclosure Schedule provides a complete list of third party components in the Company Software that is either distributed by the Company or used by the Company to provide hosted services to customers, in each case identifying (i) the applicable Contract with respect thereto, and (ii) for each item of Open Source Materials, (A) the name of each of the Open Source Materials and any modification thereof; and (B) the name and version number of the applicable license therefor. With respect to any Open Source Materials that are or have been used by the Company in any way in connection with any Company Software (including but not limited to Open Source Materials), the Company is and has been in compliance with all applicable licenses and other agreements. The Company has not used any Open Source Materials in such a way that would obligate the Company under the terms of such licenses to distribute, license or make available to any third party the source code of any of the products of Company (other than the applicable Open Source Material itself).

Other Restrictions. The Company is not bound by, and no Company-Owned IP Rights are subject to, any Contract containing any covenant or other provision that in any material way limits or restricts the ability of the Company to use, exploit, make available, assert or enforce any Company-Owned IP Right or any Company Software anywhere in the world in the manner in which the business is currently being conducted.

Privacy and Data Security.

(a) The Company is and has been at all times during the past six (6) years (i) in compliance in all material respects with the provisions of the Privacy Laws applicable to Company, (ii) in compliance with all contractual obligations to which the Company is a party to or otherwise bound regarding the Processing, privacy, security, confidentiality, or breach of Personal Information, or the rights of any individual who is a subject of Personal Information, including, without limitation, any “Business Associate Contract”, as described by 45 C.F.R. §§ 164.502(e) and 164.504(e), with any “Covered Entity”, “Business Associate”, or “Subcontractor”, as such terms are defined at 45 C.F.R. § 160.103 (collectively, the “Privacy Obligations”), (iii) in compliance with all policies, procedures, notices, and practices regarding the Processing, privacy, security, confidentiality, or breach of Personal Information or the rights of any individual who is a subject of Personal Information established and adopted by the Company or communicated by the Company to Persons to whom the Personal Information relates (collectively, the “Privacy Policies”).

(b) The Company has entered into a Business Associate Contract with each Covered Entity which constitutes a Business Associate, upstream Business Associate, or Subcontractor of the Company. To the Knowledge of the Company, no Covered Entity, upstream Business Associate, or Subcontractor of the Company has breached any Business Associate Contract to which the Company is a party.
(c) The transactions contemplated hereby and related data transfers will not violate any Privacy Obligation.

(d) The Company has, and at all times during the past six (6) years has, to the extent that Company has been subject to HIPAA, adopted written privacy and security compliance policies and procedures and conducted a comprehensive information security risk assessment as required by HIPAA and has made available to Buyer true, complete and correct copies of the most recent of such policies, procedures and risk assessments. The Company has obtained, or confirmed that other Persons have obtained, all approvals, consents, licenses, or other legal permissions, or permitted waivers of the same, necessary under Privacy Laws and Privacy Obligations for the Company to Process Personal Information in the manner so Processed by the Company. No Protected Health Information collected by the Company is used or disclosed by the Company for secondary purposes, including research, without first being de-identified in accordance with 45 C.F.R. § 164.514(b), in the event de-identification of such Protected Health Information is permitted under any applicable Business Associate Contract.

(e) Except as set forth on Section 3.14(e) of the Disclosure Schedule, the Company has not experienced, or been required under Privacy Laws, other Privacy Obligations, or the Privacy Policies to report to a Governmental Body, affected individual, Covered Entity, credit reporting agency, media outlet, or other Person (i) a “Breach” of “Unsecured Protected Health Information,” as such terms are defined at 45 C.F.R. § 164.402; (ii) a use or disclosure of Protected Health Information in violation of HIPAA or Privacy Obligations; (iii) a breach, breach of security, breach of security of a system, or unauthorized acquisition, access, use, or disclosure of any Personal Information with respect to which notification of any Person is required under any Privacy Law; or (iv) any material “Security Incident”, as defined by 45 C.F.R. § 164.304.

(f) The Company has implemented commercially reasonable measures, including, without limitation, implementing reasonable and appropriate administrative, physical, and technical safeguards and monitoring compliance with the same, designed to ensure that Personal Information is protected against loss, unauthorized access, use, modification, disclosure, or other misuse. The Company has implemented commercially reasonable disaster recovery and security plans, procedures and facilities.

(g) No investigation or Proceeding exists or is pending or, to the Knowledge of the Company, threatened, and, to the Knowledge of the Company, no facts or circumstances exist that could reasonably be expected to give rise to any such investigation or Proceeding, against Company by any Governmental Body or other Person (x) regarding the Company’s Processing of Personal Information or (y) alleging a violation of such Person’s, or any other Person’s, privacy, security, publicity, personal or confidentiality rights under Laws or noncompliance with or a violation of any Privacy Policies, Privacy Laws, or Privacy Obligations. The Company has not received any written notice or complaint of violation of any Privacy Policies, Privacy Laws, or Privacy Obligations from any Governmental Body or other Person, including, without limitation, the Office for Civil Rights of HHS, the HHS Office of Inspector General, the U.S. Department of Justice or any state attorneys general.

(h) With respect to all of the information technology and computer systems (including information technology and telecommunication hardware, communications networks and data centers) relating to the transmission, storage, maintenance, organization, presentation, generation, processing or analysis of data and information whether or not in electronic format, used by the Company: (i) there has been no material successful unauthorized intrusions or breaches of the security thereof, (ii) there has not been any material malfunction, unplanned downtime, or service interruption thereof that has not been remedied or replaced in all material respects, (iii) the Company has implemented commercially reasonable measures designed to protect the confidentiality, integrity and security of its servers, systems, sites, circuits, networks and other computer and telecommunications assets and equipment (and all information and transactions stored or contained therein or transmitted thereby) against any unauthorized use, access, interruption, modification or corruption, in conformance with applicable industry practices, including without limitation security patches or security
upgrades that are generally available therefor, and (iv) to the Knowledge of the Company, no third party providing technology services to Company has failed in any material respect to meet any service obligations. The Company has implemented reasonable backup and recovery technology processes consistent with industry standard practices.

3.15 **Contracts.**

(a) **Section 3.15(a) of the Disclosure Schedule** lists the following Contracts to which the Company is a party:

(i) each Contract with any customer or supplier that is required to be listed on **Section 3.23 of the Disclosure Schedule**;

(ii) each lease, rental or occupancy agreement, license, installment and conditional sale agreement, and other Contract affecting the ownership of, leasing of, title to, use of, or any leasehold or other interest in, any real or personal property (except personal property leases and installment and conditional sales agreements having aggregate payments of less than $50,000 and with terms of less than one year);

(iii) each Contract relating to a joint venture or partnership, or involving a sharing of profits, losses, costs or liabilities with any other Person;

(iv) each Contract relating to the acquisition, sale, transfer, or disposition by the Company of any material assets or properties, or of the operating business or the capital stock of or other equity interests in any other Person that were consummated since January 1, 2016 or under which there is any surviving liability against the Company;

(v) each Contract containing any non-competition or non-solicitation covenant that purports to restrict the business activity of the Company or other covenant that purports to limit the freedom of the Company to engage in any line of business;

(vi) each power of attorney;

(vii) each Contract for, relating to, evidencing, or guaranteeing Debt;

(viii) each Contract providing for the payment of any cash or other compensation or benefits upon the consummation of the transactions contemplated by this Agreement;

(ix) each Contract with any labor union or any bonus, pension, profit sharing, retirement or any other form of deferred compensation plan or practice, whether formal or informal, or any severance agreement or arrangement;

(x) each Contract under which the Company has advanced or loaned to any other Person amounts in the aggregate exceeding $10,000;

(xi) each franchise, dealership, vendor, manufacturing or service center Contract carrying obligations (contingent or otherwise) of, or payments to, the Company in excess of $50,000;

(xii) each Contract with any of the Company’s officers, Equityholders, directors or employees, or any Affiliate of the Company, other than (a) agreements relating to the issuance of options to purchase shares of Common Stock or (b) agreements relating to the assignments of inventions to the Company or confidentiality obligations to the Company, each of which is consistent in all material respects with the form Contracts which have been made available to Buyer;

(xiii) any settlement agreement;

(xiv) each Intellectual Property License other than any Incidental License; and

(xv) any other agreement material to the Company whether or not entered into in the Ordinary Course of Business.
The Company has made available to Buyer a correct and complete copy of each written Material Contract, together with all amendments, exhibits, attachments, waivers or other changes thereto. Section 3.15(b) of the Disclosure Schedule contains an accurate and complete description of all material terms of all oral Material Contracts (if any).

Each Material Contract is legal, valid, binding, enforceable and in full force and effect. Except as specifically disclosed and described in Section 3.15(c) of the Disclosure Schedule, (i) no Material Contract has been breached in any material respect or canceled by the Company or, to the Knowledge of the Company, any other party thereto, (ii) the Company has performed in all material respects all obligations under such Material Contracts required to be performed by the Company, (iii) to the Knowledge of the Company, there is no event that has occurred which, upon giving of notice or lapse of time or both, would constitute a breach or default in each case in any material respect under any such Material Contract or would permit the termination, modification or acceleration of such Material Contract, and (iv) the Company has not assigned, delegated or otherwise transferred to any Person any of its rights, title or interest under any such Material Contract.

3.16 Insurance. Section 3.16(a) of the Disclosure Schedule sets forth the following information with respect to each insurance policy (including policies providing property, casualty, liability, director & officer, and workers' compensation coverage and bond and surety arrangements) with respect to which the Company is a party, a named insured, or otherwise the beneficiary of coverage (collectively, the “Company Insurance Agreements”):

(a) the name of the insurer, the name of the policyholder, and the name of each covered insured;

(b) the policy number and the period of coverage; and

(c) a description of any retroactive premium adjustments or other material loss-sharing arrangements.

There is no claim by the Company or any other Person pending under any such policies and bonds as to which coverage has been questioned, denied or disputed. All premiums payable under all such policies and bonds have been paid. There are no threatened terminations of, or material premium increases with respect to, any of such policies or bonds. Section 3.16(b) of the Disclosure Schedule sets forth a list of all claims made under the Company Insurance Agreements, or under any other insurance policy, bond or agreement covering the or its operations since January 1, 2017. Since January 1, 2017, the Company has maintained insurance policies with coverage and policy limits that are substantially similar to the coverage and policy limits provided by the Company Insurance Agreements.

3.17 Litigation. Except as set forth in Section 3.17 of the Disclosure Schedule, there are no (and during the last two years there have not been any) complaints, charges, Proceedings, Orders, or investigations pending, brought, conducted, or heard by or before any Governmental Body or, to the Knowledge of the Company, threatened or anticipated relating to or affecting the Company, and to the Knowledge of the Company no facts or circumstances exist that could reasonably be expected to give rise to any such complaints, charges, Proceedings, Orders, or investigations against the Company of any of its properties or assets. There is no outstanding Order to which the Company is subject. The Company is fully insured with respect to each of the matters set forth on Section 3.17 of the Disclosure Schedule.

3.18 Employees.

(a) Section 3.18 of the Disclosure Schedule sets forth a complete and correct list of all salaried employees of the Company, showing for each: (i) name, (ii) hire date, (iii) current job title, (iv) actual base salary, bonus, commission or other remuneration paid during 2018, and (v) 2019 base salary level and 2019 target bonus and (vi) indicating whether there has been any increase in compensation, bonus, incentive, or service award or any grant of any severance or termination pay or any other increase in benefits or any commitment to do any of the foregoing since January 1, 2018.
(b) The Company has provided Buyer with complete and correct copies of (i) all existing severance, accrued vacation or other leave agreement, policies or retiree benefits of any such officer, employee or consultant, (ii) all employee trade secret, non-compete, non-disclosure and invention assignment agreements and (iii) all manuals and handbooks applicable to any current or former director, manager, officer, employee or consultant of the Company. The employment or consulting arrangement of each officer, employee or consultant of the Company is, subject to Laws involving the wrongful termination of employees, terminable at will (without the imposition of penalties or damages) by the Company and the Company does not have any severance obligations if any such officer, employee or consultant is terminated. To the Knowledge of the Company, no executive or key employee of the Company or any group of employees of the Company has plans to terminate employment with the Company.

(c) The Company has not experienced (nor, to the Knowledge of the Company, has it been threatened with) any strike, slow down, work stoppage or material grievance, claim of unfair labor practices, or other collective bargaining dispute within the past three years. The Company has not committed any material unfair labor practice. The Company has no Knowledge of any organizational effort presently being made or threatened by or on behalf of any labor union with respect to employees of the Company. The Company has paid in full to all of its employees all wages, salaries, commissions, bonuses, benefits and other compensation due and payable to such employees.

(d) All individuals who have performed services for the Company or who otherwise have claims for compensation from the Company have been properly classified as an employee or an independent contractor pursuant to all Laws, including, but not limited to, the Code and ERISA.

3.19 Employee Benefits.

(a) Section 3.19 of the Disclosure Schedule lists each Employee Benefit Plan that the Company maintains or to which the Company contributes or has any obligation to contribute or with respect to which the Company has any liabilities.

(i) Each such Employee Benefit Plan (and each related trust, insurance Contract, or fund) has been maintained, funded and administered in all material respects, in accordance with the terms of such Employee Benefit Plan and complies in form and in operation in all material respects with the applicable requirements of ERISA, the Code, and other Laws.

(ii) All required reports and descriptions (including Form 5500 annual reports, summary annual reports, and summary plan descriptions) have been timely filed and/or distributed in accordance with the applicable requirements of ERISA and the Code with respect to each such Employee Benefit Plan. The requirements of COBRA have been met in all material respects with respect to each such Employee Benefit Plan and each Employee Benefit Plan maintained by an ERISA Affiliate that is an Employee Welfare Benefit Plan subject to COBRA.

(iii) All contributions (including all employer contributions and employee salary reduction contributions) that are due have been made within the time periods prescribed by ERISA and the Code to each such Employee Benefit Plan that is an Employee Pension Benefit Plan and all contributions for any period ending on or before the Closing Date which are not yet due have been made to each such Employee Pension Benefit Plan or accrued in accordance with the past custom and practice of the Company. All premiums or other payments for all periods ending on or before the Closing Date have been paid (or, if not yet due, accrued in accordance with the past custom and practice of the Company) with respect to each such Employee Benefit Plan that is an Employee Welfare Benefit Plan.

(iv) Each such Employee Benefit Plan which is intended to meet the requirements of a “qualified plan” under Code §401(a) is so qualified and has received a favorable determination from the Internal Revenue Service or utilizes a prototype or volume submitter plan that is the subject of a favorable opinion or advisory letter issued by the Internal Revenue Service to the sponsor of such prototype or volume submitter plan.
plan, and, to the Knowledge of the Company, nothing has occurred since the date of the most recent such letter that could reasonably be expected to adversely affect the qualified status of any such Employee Benefit Plan.

(v) No Employee Benefit Plan provides medical or other welfare benefits with respect to any employee or service provider beyond their retirement or other termination of service, other than (A) coverage mandated by applicable Law, (B) coverage through the end of the month of retirement or other termination of employment or service, (C) disability benefits attributable to disabilities occurring at or prior to retirement or other termination of employment or service, and (D) conversion rights at the sole expense of the converting individual. The Company has not and does not reasonably expect to incur or be subject to, any material Tax or penalty that may be imposed under the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended ("PPACA").

(vi) There have been no nonexempt Prohibited Transactions with respect to any such Employee Benefit Plan. No Fiduciary has any liability for a material breach of fiduciary duty or any other failure to act or comply in connection with the administration or investment of the assets of any such Employee Benefit Plan. No Proceeding with respect to the administration or the investment of the assets of any such Employee Benefit Plan (other than routine claims for benefits, appeals of such claims and domestic relations order Proceedings) is pending or, to the Knowledge of the Company, threatened.

(vii) With respect to each such Employee Benefit Plan (to the extent applicable thereto), the Company has made available to Buyer correct and complete copies of (A) the current plan document and all amendments thereto, (B) the most recent summary plan description, and all summaries of material modifications related thereto, distributed to participants in such Employee Benefit Plan, (C) the most recent determination letter received from the Internal Revenue Service, (D) the most recent annual report (Form 5500, with all applicable attachments), (E) all related trust agreements, insurance Contracts, and other funding arrangements which implement such Employee Benefit Plan, in each case, as currently in effect, and (F) any material, non-routine correspondence with the IRS, DOL or PBGC within the last three years.

(b) Neither the Company nor any ERISA Affiliate contributes to, has any obligation to contribute to, or has any liability under or with respect to any Employee Pension Benefit Plan that is a “defined benefit plan” (as defined in ERISA §3(35)) or a Multiemployer Plan.

(c) Except as explicitly required by this Agreement or as disclosed on Section 3.19(c) of the Disclosure Schedule, the consummation of the transactions contemplated by this Agreement will not entitle any employee of the Company or other individual to receive payment of any severance pay or change in control or other payment of any severance pay or change in control or other payment of any money or other property from the Company or would result in the acceleration or provision of any other rights or benefits to any individual, whether or not such payment, right or benefit would constitute a parachute payment within the meaning of Section 280G of the Code. No payments under any Employee Benefit Plan or otherwise would result in an excise tax under Section 4999 of the Code on any employee, director or independent contractor providing services to the Company. The Company has no obligation to “gross-up” any individual with respect to taxes incurred under Section 4999 or Section 409A of the Code.

(d) Each Employee Benefit Plan that is a “nonqualified deferred compensation plan” subject to Code Section 409A is in compliance in all material respects with the requirements of Code Section 409A(a)(2), (3), and (4) and any Internal Revenue Service guidance issued thereunder.

3.20 Debt. Except as set forth on Section 3.20 of the Disclosure Schedule, the Company does not have any Debt and is not liable for any Debt of any other Person.

3.21 Business Continuity. None of the Company Software, computer hardware (whether general or special purpose) or telecommunications capabilities (including all voice, data and video networks) and other similar or related items of automated, computerized, and/or software systems and any other networks or systems and
related services that are used by or relied on by the Company in the conduct of its businesses (collectively, the “Systems”) have experienced bugs, failures, breakdowns, or continued substandard performance in the past twelve (12) months that has caused or reasonably could be expected to cause any substantial disruption or interruption in or to the use of any such Systems by the Company.

3.22 Certain Business Relationships with the Company. Except as set forth on Section 3.22 of the Disclosure Schedule, none of the Equityholders, nor any officer or director of the Company, nor any Affiliates of any of the foregoing:

(a) to the Company’s Knowledge, owns, directly or indirectly, any stock or other ownership interest or investment in any Person that is engaged in the Business (other than the Company) or is a competitor, supplier, customer, lessor or lessee of the Company; provided, however, that the foregoing representation shall be deemed not to be made as to the ownership of not more than 1% of the capital stock of any such Person that has securities registered pursuant to Section 13 or Section 15 of the Securities Exchange Act;

(b) has any claim against or owes any amount to, or is owed any amount by, the Company, other than compensation in the Ordinary Course of Business for services provided to the Company;

(c) has any interest in or owns any assets, properties or rights used in the conduct of the business of the Company;

(d) is a party to any Contract to which the Company is a party or which otherwise benefits the business of the Company other than (i) the issuance of options to purchase shares of Common Stock, or (ii) agreements relating to the assignments of inventions to the Company or confidentiality obligations to the Company; or

(e) has received from or furnished to the Company any goods or services since the Most Recent Fiscal Year End, or is involved in any business relationship with the Company other than in respect of their services to the Company.

3.23 Significant Business Partners; Providers. Section 3.23 of the Disclosure Schedule sets forth a list of the Significant Business Partners as of the date hereof. Except as set forth on Section 3.23 of the Disclosure Schedule, since January 1, 2017, none of the Significant Business Partners (i) has canceled, suspended or otherwise terminated (or has provided written notice that it intends to cancel, suspend or otherwise terminate) its entire business relationship with the Company (other than reductions in the ordinary course of business consistent with past practice). The Company has not been informed in writing or, to the Company’s Knowledge, orally by any Significant Business Partner that, as a result of the consummation of the transactions contemplated hereby, that such Significant Business Partner will cancel, suspend or terminate its relationship with the Company, materially reduce its business with the Company, or adversely change the terms upon which it pays for products or services from the Company.

3.24 Restrictions on Business Activities. There is no Contract, Order, or other instrument binding upon the Company, its Equityholders, or the current or former officers, or directors of the Company which restricts or prohibits the Company from competing with any other Person, from engaging in any business or from conducting activities in any geographic area, or which otherwise restricts or prohibits the conduct of the business of the Company.

3.25 Product Warranty. Each product or service, developed, sold, leased, or delivered by the Company is and has been developed, sold, leased, or delivered in conformity with all applicable contractual commitments and all express and implied warranties, and the Company does not have any liability (and to the Knowledge of the Company there is no basis for any present or future action, suit, proceeding, hearing, investigation, charge,
complaint, claim, or demand against any of them giving rise to any liability) for replacement or repair thereof or other damages, liability or obligations in connection therewith, in excess of the reserve for warranty claims set forth on the Most Recent Balance Sheet as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Company. Section 3.25 of the Disclosure Schedule includes copies of the standard terms and conditions of service, sale or lease for the Company (containing applicable guaranty, warranty, and indemnity provisions). No product or service sold, leased, or delivered by the Company is subject to any guaranty, warranty, or other indemnity different in any material respect than the limited warranty provided by the Company in its form partnership agreement set forth in Section 3.25 of the Disclosure Schedule, except for any guaranty, warranty or other indemnity that is imposed by Law.

3.26 Regulatory Matters.

(a) The Company is not currently engaged in, nor has previously engaged in, any activities requiring an Authorization from FDA or any other similar Governmental Body, including, but not limited to, the development, testing, manufacture, marketing, promotion, assembly, distribution, commercialization, licensing, or sale of any software or other product subject to regulation by FDA or any other similar Governmental Body as a medical device.

(b) The Company has not received written notice of, nor been subject to, any adverse inspectional finding, data integrity review, investigation, penalty, fine, reprimand, sanction, assessment, request for corrective or remedial action, warning letter, regulatory letter, untitled letter, FDA Form 483, or other compliance or enforcement notice, communication, or correspondence from FDA or any other Governmental Body.

(c) Neither the Company nor, any of its directors, officers, stockholders, employees, agents, or affiliates have (i) intentionally made an untrue statement of material fact or fraudulent statement on behalf of the Company to any other Governmental Body, or intentionally made an untrue statement of material fact on behalf of the Company in any records or documentation prepared or maintained to comply with the applicable Laws; (ii) intentionally failed to disclose a material fact required to be disclosed to any Governmental Body; (iii) or has ever been has been convicted of or charged or threatened in writing with prosecution or is, to the Knowledge of the Company, under an investigation or subject to any enforcement action by a Governmental Body, including FDA, the National Institutes of Health, the U.S. Centers for Medicare & Medicaid Services, the Office of the Inspector General for the Department of Health and Human Services, Office for Civil Rights of HHS, or the Department of Justice, or assessed any Civil Monetary Penalty, for any violation of a Health Care Law, including for data or Federal Healthcare Program fraud. Neither the Company nor any of its officers, directors, or employees, directly or indirectly, have made or offered any remuneration (in cash or in kind), payment, gratuity or other thing of value that is prohibited by any Law, including any Health Care Law, to any referral sources, referral recipient, or Governmental Body or any government official, employee, agent or personnel.

(d) Neither Company nor any of its employees, agents, contractors, officers, or directors have been excluded from, debarred, restricted, suspended, or prohibited from participation in any Federal Healthcare Program, listed on the General Services Administration published list of parties excluded from federal procurement programs and non-procurement programs, or designated a Specially Designated National or Blocked Person by the Office of Foreign Asset Control of the U.S. Department of Treasury.

(e) The Company is and at all times has been in compliance in all material respects with all applicable Health Care Laws, and none of the Company or its Subsidiaries has received written notice from any Government Authority, commercial or private third party payor or insurance plan, or other Person alleging any material failure to comply with applicable Health Care Laws.

(f) The Company is not and has never been the subject of an audit, inspection, investigation, or review by a Governmental Body or any other commercial or private third party payor or insurance plan for a violation of any Health Care Laws, including, without limitation, any Federal Health Care Program requirement.
(g) The Company has, at all times, engaged healthcare professionals which have in good standing all licenses, registrations, certifications
and approvals required to provide clinical oversight and supervision of the services provided by the Company, its employees, or its affiliates in
accordance with and as may be required by applicable Law.

3.27 Disclosure Schedule. The Company has provided Buyer full and complete copies of all documents referred to on the Disclosure Schedule.

ARTICLE 4
COVENANTS

4.1 Stockholder Consent:

(a) As soon as practicable after the date of this Agreement, but in no event later than three (3) Business Days following the execution of this
Agreement, the Company shall deliver to all Stockholders an information statement that includes all information that is required to be given to such
Stockholders pursuant to the DGCL in connection with the Merger (including, to the extent applicable, adequate notice of the Merger and a notice of
appraisal rights in accordance with Section 262 of the DGCL) (collectively, the “Stockholder Materials”). Prior to the delivery of the Stockholder
Materials, the Company will give Buyer and its counsel a reasonable opportunity, but in no event less than three (3) Business Days, to review and
comment on reasonably final drafts of the Stockholder Materials; provided that the Stockholder Materials shall be reasonably acceptable to Buyer At
the time they are sent and at all times subsequent thereto (through and including the Effective Time) (subject to any reasonable time period needed to
prepare and circulate an amendment or supplement as contemplated by the next sentence), the Stockholder Materials will not contain any untrue
statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, not
misleading. If, at any time prior to the Effective Time, any event or information should be discovered by the Company which should reasonably be set
forth in an amendment or supplement to the Stockholder Materials, then the Company will promptly inform Buyer of such occurrence, and the
Company will deliver to its Stockholders such amendment or supplement. The Stockholder Materials will include the recommendation of the board of
directors of the Company in favor of this Agreement and the Merger and the conclusion of the board of directors of the Company that the terms and
conditions of the Merger are fair and reasonable to, and in the best interests of, the Stockholders.

(b) Promptly following the execution of this Agreement, but in no event later than ten (10) days prior to Closing, the Company shall
deliver to each holder of a Warrant the appropriate notice of early termination in accordance with the terms of such Warrant. Prior to the delivery of
such notice, the Company will give Buyer and its counsel a reasonable opportunity, but in no event less than three (3) Business Days, to review and
comment on such notice.

4.2 State Takeover Laws. If any “fair price” or “control share acquisition” statute or other similar statute or regulation shall become applicable to
the transactions contemplated hereby, Buyer and its board of directors and the Company and its board of directors shall use commercially reasonable
efforts to grant such approvals and take such actions as are reasonably necessary so that the transactions contemplated hereby may be consummated as
promptly as practicable on the terms contemplated hereby and otherwise act in a manner reasonable to minimize the effects of any such statute or
regulation on the transactions contemplated hereby.

4.3 Conduct of Business Prior to the Closing. From the date hereof until the earlier to occur of the Closing of the termination of this Agreement
pursuant to Article 10 (the “Interim Period”), Closing, except as otherwise
provided in this Agreement or consented to in writing by Buyer, the Company shall use commercially reasonable efforts to:

(a) operate its business in the Ordinary Course of Business;

(b) in all material respects preserve its business organization, maintain its rights and ongoing operations, retain the services of and maintain and preserve its relationship with its officers, employees and consultants and maintain and preserve its relationship with its material customers, suppliers, licensors, licensees, creditors, lessors and others having material business relationships with it;

(c) maintain and keep its material tangible assets in as good repair and condition as at present, ordinary wear and tear excepted (consistent with the age of such items);

(d) keep in full force and effect insurance comparable in amount and scope of coverage to that currently maintained;

(e) operate its business in all material respects in compliance with all Laws;

(f) pay all expenses and liabilities when due in the Ordinary Course of Business;

(g) pay in a timely fashion, or accrue for, all Taxes or other public charges levied against it, or against the Company’s business or its assets;

(h) not split, combine, subdivide, reclassify or amend any Company Securities or declare, set aside for payment or pay any dividend, or make any other actual, constructive or deemed distribution in respect of any Company Securities or any other ownership interests or otherwise make any payments to the Stockholders in their capacity as such (other than the repurchase of any share of Common Stock from former employees, non-employee directors and consultants in accordance with agreements existing as of the date of this Agreement providing for the repurchase of share in connection with any termination of services);

(i) not issue, sell or dispose of, or agree to issue, sell or dispose of any (i) additional shares of capital stock of any class or other ownership interests (including Company Securities), (ii) contingent value, stock appreciation, phantom stock, profit participation or similar rights, (iii) securities or rights convertible into, exchangeable for, or evidencing the right to subscribe for any shares of capital stock or other ownership interests, or (iv) any rights, warrants, options, calls, commitments or any other Contracts of any character to purchase or acquire any of the foregoing, (in each case other than the issuance of Common Stock issuable upon the exercise or conversion of (A) Options outstanding on the date of this Agreement in accordance with their terms, or (B) Warrants outstanding on the date of this Agreement in accordance with their terms);

(j) not adopt any amendments to the certificate of incorporation or bylaws of the Company;

(k) not acquire, or agree to acquire, in a single transaction or series of related transactions, any business or assets having a value in excess of $10,000 individually or $50,000 in the aggregate, other than transactions that are in the Ordinary Course of Business;

(l) not enter into any exclusive licensing arrangement regarding any Company IP Rights or enter into any non-exclusive licenses, other than those non-exclusive licenses that are entered into in the Ordinary Course of Business and on terms that are similar in all material respects with the terms of the currently existing non-exclusive licenses of the Company;

(m) not sell, pledge, dispose, transfer, lease, license (except for non-exclusive licenses entered into in the Ordinary Course of Business), guarantee, mortgage, or subject to Lien or authorize the sale, pledge, disposition, transfer, lease, license, mortgage, guarantee of or Lien on any of its assets having a value of $50,000 or more;

(n) not enter into any joint venture agreement or partnership agreement;

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(o) not make any material change in its accounting systems, policies or practices, except as required by GAAP or Laws;

(p) not make or change any election with respect to Taxes, change any Tax accounting period, adopt or change any method of Tax accounting, file any amended Tax Return, enter into a settlement or closing agreement with any taxing authority, surrender any right to claim a refund for Taxes, or consent to an extension of the statute of limitations applicable to any Tax claim or assessment;

(q) not (i) incur or assume any Debt (other than accounts payable and expenses for travel and other appropriate business expenses in the Ordinary Course of Business), (ii) guarantee or otherwise become liable for any Debt of another Person, (iii) issue or sell any debt securities or other rights to acquire any debt securities of the Company or guarantee any debt securities of another Person, (iv) make any loans, advances (other than advances for travel and other appropriate business expenses in the Ordinary Course of Business) or capital contributions to, or investments in, any other Person, or (v) cancel any Debt or claims;

(r) not (i) modify or amend any Material Contract in a manner adverse to the Company, (ii) terminate (including by failing to renew) any Material Contract to which the Company is a party, or (iii) waive, release or assign any material rights or claims thereunder;

(s) not enter into any Contract that, if it were effective on the date of this Agreement, would constitute a Material Contract other than in the Ordinary Course of Business;

(t) not consent to allow any insurance policy naming the Company as beneficiary or loss payee to be cancelled or terminated, or instruct any of the Company’s insurance carriers to decrease any current policy coverage limits or materially change the terms of such coverage, other than to increase the coverage in the Ordinary Course of Business;

(u) not commence any Proceeding against any Person or settle or compromise, or pay or agree to pay any material amount or perform any material obligation in settlement or compromise of, any pending or threatened litigation involving the Company, or its directors, officers, employees, or agents, any Company IP Rights, or any Employee Benefit Plan;

(v) not modify, amend or terminate, or waive, release or assign any rights or claims with respect to any confidentiality or standstill Contract to which the Company is a party;

(w) not make or agree to make any commitment for capital expenditures other than as set forth in Schedule 4.3(w) or fail to incur any capital expenditures set forth in Schedule 4.3(w);

(x) not engage in any promotional, sales, discount, or other similar activity that could reasonably be expected to have the effect of accelerating sales prior to the Closing that would otherwise be expected to occur subsequent to the Closing or delay any sales that would otherwise be expected to occur prior to the Closing;

(y) not accelerate the collection of accounts receivable, delay the payment of any accounts payable or take any other actions with respect to Working Capital outside of the Ordinary Course of Business; or

(z) except as required pursuant to Sections 1.7(c) and 1.7(d) not agree to or effect any amendment to any of the outstanding Options or Warrants.

During the Interim Period, except as consented to in writing by Buyer, the Company shall not take or agree to take (x) any action that would reasonably be expected to result in a breach of any of the Company’s representations and warranties or covenants in this Agreement or in any statement or certificate delivered in connection herewith, (y) any action that would reasonably be expected to result in any of the conditions set forth in Article 5 not being satisfied or (z) any action that would cause any of the changes, events or conditions described in Section 3.8(b) to occur.
Buyer acknowledges and agrees that: (i) nothing contained in this Agreement, including the restrictions set forth in this Section 4.3, shall give Buyer, directly or indirectly, the right to control or direct the Company’s operations prior to the Closing, (ii) prior to the Closing, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its operations, and (iii) notwithstanding anything to the contrary set forth in this Agreement, no consent of Buyer shall be required with respect to any matter set forth in this Section 4.2 or elsewhere in this Agreement to the extent that the requirement of such consent could as determined by Buyer’s counsel violate any Law.

4.4 Notification; Schedule Updates. During the Interim Period, the Company will promptly notify Buyer in writing of: (i) the discovery by the Company of any event, condition, fact or circumstance that occurred or existed on or prior to the date of this Agreement and that caused or constitutes a breach of any representation or warranty made by the Company in this Agreement; (ii) any event, condition, fact or circumstance that occurs, arises or exists after the date of this Agreement and that would reasonably be expected to cause or constitute a breach of any representation or warranty made by the Company in this Agreement if such event, condition, fact or circumstance had occurred, arisen or existed on or prior to the date of this Agreement; (iii) any breach of any covenant or obligation of the Company set forth in this Agreement; and (iv) any event, condition, fact or circumstance that may reasonably be expected to make the timely satisfaction of any of the conditions set forth in Article 5 impossible or unlikely. In the case of any event, condition, fact or circumstance described in subsections (i) or (ii) above the Company may supplement, update or amend the Disclosure Schedule in connection with the discovery or occurrence of such event. For the avoidance of doubt, no such notification, supplement, update or amendment of the Disclosure Schedule will be effective to cure or correct any breach of any representation, warranty or covenant, or constitute the waiver of any rights of Buyer, including for the purposes of the indemnification rights in Article 8, of the termination rights under Section 10.1, or of determining whether or not the conditions set forth in Article 5 have been met.

4.5 Adverse Developments. The Company will promptly notify Buyer in writing of any Material Adverse Effect with respect to the Company occurring during the Interim Period.

4.6 Regulatory and Other Authorizations; Notices and Consents. During the Interim Period, the Buyer, Merger Sub and the Company shall, as promptly as possible, use their respective reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Bodies and third parties that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement. Each such party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. None of the Buyer, Merger Sub and the Company shall willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

4.7 General. In case at any time after the Closing any further action is necessary to carry out the purposes of this Agreement, each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as any other Party reasonably may request, all at the sole cost and expense of the requesting Party (unless the requesting Party is entitled to indemnification therefor under Article 8 below). Except as specifically provided in Section 12.20(b), the Stockholders acknowledge and agree that, from and after the Closing, Buyer will be entitled to possession of all documents, books, records (including Tax records), agreements and financial data of any sort relating to the Company.

4.8 Payment of Designated Payables. At least one (1) Business Day prior to Closing, the Company shall pay all bills payable set forth on Schedule 4.8.1 (the “Designated Payables”). The Company will take such action as reasonably requested by Buyer to assist with the Company’s audit for fiscal 2018 and the implementation with respect to ASC 606.

4.9 Litigation Support. In the event and for so long as Buyer or the Company actively is contesting or defending against any Proceeding in connection with any fact, situation, circumstance, action, failure to act, or
transaction on or prior to the Closing Date involving the Company, each of the Founders will cooperate with it and its counsel in the contest or defense and provide such testimony and access to such Founder's books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of Buyer and the Company (unless Buyer and the Company are entitled to indemnification therefor under Article 8 below).

4.10 Access to Information; Monthly Reports. The Company shall afford to Buyer and its representatives reasonable access, during normal business hours and upon reasonable advance notice to the Company, under the supervision of the Company's personnel during the Interim Period, to all its key personnel, properties, books, Contracts, commitments and records as Buyer may reasonably request. During such period, the Company shall make available to Buyer all other information concerning its business, properties and personnel as Buyer or its representatives may reasonably request. During the Interim Period, the Company shall furnish Buyer and its representatives with monthly financial statements, each within 30 days of the end of the applicable month, and information of the type and detail currently prepared by the Company and such other financial, operating and other data and information related to the Company as Buyer may reasonably request. Any access, disclosure or investigation rights afforded in this Section 4.10 shall not require the Company to provide access to, or disclose any information to, Buyer or any of its representatives if such access, disclosure or investigation would (a) waive any legal privilege or (b) be in violation of applicable Law or the provision of any Contract entered into prior to the date of this Agreement to which the Company is a party.

4.11 Confidentiality. The Parties acknowledge that Buyer and the Company have previously executed the Confidentiality Agreement which shall continue in full force and effect in accordance with its terms, and the parties hereby agree that the information obtained in any investigation, negotiation and execution of this Agreement or the effectuation of the transactions contemplated hereby, shall be governed by the terms of the Confidentiality Agreement. If the Merger is consummated in accordance with this Agreement, then effective on the Effective Date each Equityholder agrees not to disclose or use any Confidential Information, except that, if and as long as a Equityholder is an employee of the Company after the Closing, then such Equityholder may use the Confidential Information in the ordinary course of his or her employment on behalf of the Company so long as such use is in compliance with all policies and agreements applicable to such Equityholder, except, in each case, to the extent that (a) such information has otherwise been made public (other than as a result of disclosure by the Company or such Equityholder); (b) any such information is disclosed to any Governmental Entity in connection with any Proceeding involving a dispute between the Equityholder and Buyer; (c) to the extent disclosure of specific terms of the transaction contemplated hereby is made by an Equityholder that is a venture capital or private equity fund, in communications to its investors or prospective investors as may be legally or contractually required, or customarily provided to investors or prospective investors in the ordinary course of business and such investors or prospective investors are bound by confidentiality with respect to the information disclosed. Upon termination of such employment, each Equityholder will deliver promptly to Buyer or destroy, at the request and option of Buyer, all tangible embodiments (and all copies) of the Confidential Information that are in his or her possession. If any Equityholder is requested or required pursuant to written or oral question or request for information or documents in any Proceeding, interrogatory, subpoena, civil investigation demand or similar process to disclose any Confidential Information, then such Equityholder will notify Buyer promptly of the request or requirement so that Buyer may seek an appropriate protective order or waive compliance with the provisions of this Section 4.11. If, in the absence of a protective order or the receipt of a waiver hereunder, any Equityholder is, on the advice of counsel, compelled to disclose any Confidential Information to any tribunal or else stand liable for contempt, then such Equityholder may disclose the Confidential Information to the tribunal; provided, however, that the disclosing Equityholder shall use its, his or her best efforts to obtain, at the request of Buyer, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as Buyer shall designate. The foregoing provisions shall not apply to any Confidential Information that is generally available to the public immediately prior to the time of disclosure unless such Confidential Information is so available due to the actions of an Equityholder.

4.12 Exclusivity. The Company agrees that, during the Interim Period, the Company will not, and will cause each of its directors, officers, employees, representatives, agents, subsidiaries, affiliates, and stockholders not to,
directly or indirectly: (a) solicit, initiate, knowingly encourage or knowingly facilitate any inquiries or the making of any proposals or offers from any Person (other than Buyer and its representatives) concerning (i) any transfer or sale of assets of the Company (not in the Ordinary Course of Business); (ii) the issuance of any capital stock or other equity or debt interests of the Company, other than Options issued to newly hired or promoted employees in the Ordinary Course of Business and other than capital stock issued upon exercise or conversion of presently outstanding exercisable or convertible securities, or (iii) any acquisition, business combination, amalgamation, change of control or other similar transaction involving the Company; (b) have any discussion with or provide any confidential information or data to any person or entity relating to any such inquiry, proposal or offer; (c) approve or recommend, or propose to approve or recommend, whether publicly or to any director or Equityholder, any such proposal or offer; or (d) approve or recommend, or propose to approve or recommend, or execute or enter into, any letter of intent, agreement in principal, merger agreement, acquisition agreement, option agreement or other similar agreement related to any such proposal or offer, or propose, whether publicly or to any director or Equityholder, or agree to do any of the foregoing related to any such proposal or offer. Immediately after execution of this Agreement, the Company will, and will instruct its representatives to, immediately cease and terminate any existing discussion, or negotiation with any third parties conducted heretofore by the Company or any of its representatives with respect to any of the foregoing. The Company will promptly advise Buyer of, and communicate to Buyer in writing the terms and conditions of (and the identity of the person or entity making), any such inquiry, proposal or offer received subject to, and only to the extent of, applicable contractual obligations of the Company under non-disclosure or similar agreements existing as of November 30, 2018.

4.13 Employees.

(a) Buyer, the Surviving Corporation and their respective Subsidiaries and Affiliates shall treat, and shall cause each plan, agreement, program, policy and arrangement sponsored or maintained by Buyer, the Surviving Corporation or any of their respective Subsidiaries or Affiliates following the Effective Time and in which any employee of the Company immediately prior to the Closing Date (a “Retained Employee”) (or the spouse, domestic partner or dependent of any Retained Employee) participates or is eligible to participate (each, a “Buyer Plan”) to treat, for all purposes, all service with the Company (and any predecessor employers if the Company or any Employee Benefit Plan provides past service credit) as service with Buyer, the Surviving Corporation and their respective Subsidiaries and Affiliates; provided, however, that such service need not be counted to the extent it would result in duplication of benefits and such service need only be credited to same extent and for the same purpose as such service was credited under the corresponding Employee Benefit Plan. Buyer, the Surviving Corporation and their respective Subsidiaries and Affiliates will use commercially reasonable efforts to cause each Buyer Plan that is a welfare benefit plan, within the meaning of Section 3(1) of ERISA, (i) to waive any and all eligibility waiting periods, actively-at-work requirements, evidence of insurability requirements, pre-existing condition limitations and other exclusions and limitations regarding the Retained Employees and their spouses, domestic partners and dependents to the extent waived, satisfied or not included under the corresponding Employee Benefit Plan, and (ii) to recognize for each Retained Employee for purposes of applying annual deductible, co-payment and out-of-pocket maximums under such Buyer Plan any deductible, co-payment and out-of-pocket expenses paid by such Retained Employee and his or her spouse, domestic partner and dependents under the corresponding Employee Benefit Plan during the plan year of such Employee Benefit Plan in which occurs the later of the Closing Date and the date on which such Retained Employee begins participating in such Buyer Plan.

(b) Nothing in this Section 4.13, whether express or implied, shall confer upon any current or former employee of the Company, Buyer, the Surviving Corporation or any of their respective Subsidiaries or Affiliates, any rights or remedies including any right to employment or continued employment for any specified period, of any nature or kind whatsoever. No provision of this Section 4.13 is intended to modify, amend or create any employee benefit plan, fund, program or arrangement of the Company, Buyer, the Surviving Corporation or any of their respective Subsidiaries or Affiliates.
(c) Effective the day prior to the Closing Date, the Company shall take action to terminate the Company’s 401(k) plan. The Company and Buyer shall use their reasonable best efforts to cause the assets of such plan (including any promissory notes evidencing outstanding participant loans) to be transferred to the Buyer’s 401(k) plan, in accordance with applicable Law.

4.14 Independent Investigation; No Reliance. In connection with its investment decision, Buyer and its representatives have inspected and conducted such independent review, investigation and analysis (financial and otherwise) of the Company as desired by Buyer. The execution and delivery of this Agreement by Buyer and the consummation of the transactions contemplated hereby are not done in reliance upon any representation or warranty or omission by, or information from, the Company, any Equityholder or any of their respective Affiliates, employees or representatives, whether oral or written, express or implied, including any implied warranty of merchantability or of fitness for a particular purpose, except for the representations and warranties specifically and expressly set forth in Article 2 and Article 3 (as modified by the Disclosure Schedule) or any certificate required to be delivered by any such Stockholder or the Company pursuant to this Agreement, and Buyer acknowledges that the Equityholders and the Company expressly disclaim any other representations and warranties. Buyer acknowledges that none of the Equityholders or the Company has made any representations or warranties to Buyer regarding the probable success or profitability of the Company or its business.

ARTICLE 5

CONDITIONS TO BUYER'S AND MERGER SUB'S OBLIGATIONS

The obligations of Buyer and Merger Sub to consummate this Agreement and the Closing of the transactions contemplated hereunder are subject to the satisfaction of each of the following conditions on or prior to the Closing Date:

5.1 Representations and Warranties. The representations and warranties of the Company to Buyer contained in this Agreement (and in any certificates delivered by the Company pursuant to this Agreement) that are qualified by materiality (including by a Material Adverse Effect qualifier) will be true and correct in all respects as of the date of this Agreement and as of the Closing Date (except for such representations and warranties that speak of a particular date, which shall be true and correct in all respects as of such date); the representations and warranties of the Company to Buyer contained in this Agreement (and in any certificates delivered by the Company pursuant to this Agreement) that are not so qualified by materiality (including a Material Adverse Effect qualifier) will be true and correct in all material respects (in each case, subject to all qualifications as to Knowledge, if any, set forth in those representations and warranties) as of the date of this Agreement and as of the Closing Date (except for such representations and warranties that speak of a particular date, which shall be true and correct in all material respects as of such date) and the Fundamental Representations contained in this Agreement will be true and correct in all respects as of the Closing Date.

5.2 Compliance with Covenants. All of the covenants set forth in this Agreement to be complied with and performed by the Company on or before the Closing Date will have been duly complied with and performed in each case in all material respects.

5.3 Closing Deliverables. On the Closing Date the Company will have delivered or caused to be delivered to the Buyer the duly executed Closing deliverables as specified in Section 7.1.

5.4 Absence of Litigation. As of the Closing, no Proceeding will be pending or threatened before any court, other Governmental Body or arbitrator, which if successful, would (i) enjoin, restrain, or prohibit the consummation of the transactions contemplated by this Agreement or any Ancillary Agreements or (ii) materially adversely affect the right of Buyer following the Closing to own the Company Securities or the right of Buyer to operate the Company as currently operated to use the Company IP Rights.

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5.5 **No Material Adverse Effect.** There will have been no Material Adverse Effect during the period from the date of this Agreement to the Closing Date.

5.6 **Third Party Consents; Notice.** The Company shall have procured all of the consents or approvals, or given notice to certain third parties, in each case as set forth on Schedule 5.6.

5.7 **Requisite Vote; Letters of Transmittal; Appraisal Rights.** (i) Evidence that the Requisite Vote was obtained shall have been delivered to Buyer, (ii) Stockholders owning at least ninety-five percent (95%) of the outstanding Common Stock shall have adopted this Agreement and approved the Merger and executed Jointers, each in the form attached hereto as Exhibit C (each, a “Joinder”), and (iii) Stockholders owning no more than five percent (5%) of the outstanding Company Common Stock shall have exercised their appraisal rights under Section 262 of the DGCL.

5.8 **No Order.** No Governmental Body shall have enacted, issued, promulgated, enforced or entered any Law or Order that has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting the consummation of such transactions.

5.9 **Designated Payables.** Evidence reasonably satisfactory to Buyer that the Designated Payables have been satisfied in full.

**ARTICLE 6**

**CONDITIONS TO COMPANY’S OBLIGATIONS**

The obligations of the Company to consummate this Agreement and Closing of the transactions contemplated hereunder are subject to the satisfaction of each of the following conditions on or prior to the Closing Date:

6.1 **Representations and Warranties.** The representations and warranties of Buyer to the Stockholders and the Company contained in this Agreement (and in any certificates delivered by Buyer pursuant to this Agreement) that are qualified by materiality (including by a Material Adverse Effect qualifier) will be true and correct in all respects (except for such representations and warranties that speak of a particular date, which shall be true and correct in all respects as of such date) and the representations and warranties of Buyer to Stockholders contained in this Agreement (and in any certificates delivered by Buyer pursuant to this Agreement) that are not so qualified by materiality (including by a Material Adverse Effect qualifier) will be true and correct in all material respects (in each case, subject to all qualifications as to knowledge set forth in those representations and warranties) as of the Closing Date (except for such representations and warranties that speak of a particular date, which shall be true and correct in all material respects as of such date).

6.2 **Compliance with Covenants.** All of the covenants set forth in this Agreement to be complied with and performed by the Buyer or Merger Sub on or before the Closing Date will have been duly complied with and performed in each case in all material respects.

6.3 **Closing Deliverables.** On the Closing Date, Buyer will have delivered or caused to be delivered to the Company or other third parties the duly executed Closing deliverables, as specified in Section 7.2 below.

6.4 **Government Consents.** The Government Consents shall have been obtained, including, but not limited to, any consents or approvals as may be required under the HSR Act or any other Antitrust Law.

6.5 **No Order.** No Governmental Body shall have enacted, issued, promulgated, enforced or entered any Law or Order that has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting the consummation of such transactions.

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ARTICLE 7

CLOSING DELIVERIES

7.1 Closing Deliveries of the Company. At or prior to the Closing the Company, shall deliver or cause to be delivered to Buyer or at the direction of Buyer to the Exchange Agent:

(a) the certificates representing all of the outstanding Common Stock, together with the other appropriate instruments of transfer to convey the same to Buyer;

(b) the Certificate of Merger, executed by the Company which shall be filed by Buyer with the Delaware Secretary of State;

(c) a certificate of the Secretary of the Company, dated as of the Closing Date, attaching and certifying (i) the Organizational Documents of the Company, (ii) the authorizing resolutions of the Company approving the Merger, this Agreement and the transactions contemplated hereby, and (iii) the incumbency and signatures of the Persons signing this Agreement, the Escrow Agreement, and the other Ancillary Agreements to which the Company is a party;

(d) a certificate of the Chief Executive Officer of the Company as to the satisfaction of the conditions set forth in Sections 5.1, 5.2, 5.4, 5.5, 5.7 and 5.8;

(e) good standing certificates for the Company from Delaware and each jurisdiction in which the Company is qualified to do business;

(f) counterpart signature pages to the Proprietary Information, Inventions Assignment, and Non-Solicitation Agreement, each in the form attached hereto as Exhibit B by each Founder and each member of the Management Team;

(g) resignation letters from each member of the board of directors and each officer of the Company forth on Schedule 7.1(g);

(h) all documentation necessary to obtain releases of all Liens (other than the Permitted Liens), including appropriate UCC termination statements, if any;

(i) payoff and release letters from the holders of the Debt set forth on Schedule 7.1(i) that (i) reflect the amounts required in order to pay in full such Debt and (ii) provide that, upon payment in full of the amounts indicated, all Liens with respect to the assets of the Company shall be terminated and of no further force and effect, together with UCC-3 termination statements with respect to any financing statements filed against the assets or equity interests of the Company by the holders of such Liens;

(j) a termination agreement from each party to the related party Contracts identified on Schedule 7.1(j);

(k) the Escrow Agreement in the form attached hereto as Exhibit D, duly executed by the Representative;

(l) Employment Agreements each in the form attached hereto as Exhibit E, signed by each of the Founders;

(m) Non-Competition Agreements each in the form attached hereto as Exhibit H, signed by each of the Persons set forth on Schedule 11.2(a);
(n) evidence, in form and substance, satisfactory to Buyer that the Company’s 401(k) plan and all Company stock option plans and warrants have been terminated;

(o) a certificate, addressed to Buyer and dated as of the Closing Date and duly executed under penalties of perjury by a responsible corporate officer of the Company, certifying that the Company is not, and has not been at any time during the five-year period ending on the Closing Date, a “United States real property holding corporation” within the meaning of Section 897(c)(2) of the Code, together with a notice, prepared in accordance with Treasury Regulations Section 1.897-2(h)(2) and duly executed under penalties of perjury by a responsible corporate officer of the Company, in each case in form and substance reasonably acceptable to Buyer;

(p) each member of the Management Team shall have executed offer letters in substantially the form attached hereto as Exhibit I;

(q) Transaction Bonus Release Letters each in the form attached hereto as Exhibit J, signed by each of the Persons set forth on Schedule 7.1(q);

(r) at least two (2) Business Days prior to the Closing Date, the Unaudited 2018 Financial Statements;

(s) evidence reasonably acceptable to Buyer that the Company has engaged independent auditors to prepare the Company’s audit for fiscal 2018 and assist the Company with respect to the implementation of ASC 606, with the audit and implementation being scheduled to be completed no later than March 31, 2019; and

(t) all other instruments and documents required by this Agreement to be delivered by the Company, the Equityholders or the Representative to Buyer, and such other instruments and documents which Buyer or its counsel may reasonably request to effectuate the transactions contemplated hereby.

All such agreements, documents and other items shall be in form and substance reasonably satisfactory to Buyer.

7.2 Closing Deliveries of Buyer. At or prior to the Closing, Buyer shall deliver to the Company:

(a) the Certificate of Merger duly executed by the Buyer or Merger Sub;

(b) a certificate from the Secretary of Buyer, dated as of the Closing Date, attaching and certifying (i) the Organizational Documents of Buyer and Merger Sub, (ii) the authorizing resolutions of the Buyer and Merger Sub approving the Merger, this Agreement and the transactions contemplated hereby, and (iii) the incumbency and signatures of the Persons signing this Agreement and the other Ancillary Agreements to which Buyer or Merger Sub is a party;

(c) a certificate of an officer(s) of Buyer and Merger Sub as to the satisfaction of the conditions set forth in Sections 6.1, 6.2, 6.4 and 6.5;

(d) the Exchange Agent Agreement, duly executed by Buyer and the Exchange Agent;

(e) counterparty signature pages to the Escrow Agreement, duly executed by Buyer and the Escrow Agent; and

(f) payment to the Persons designated in and in accordance with Section 1.10(a); and

(g) all other instruments and documents required by this Agreement to be delivered by Buyer to the Company, the Equityholders or the Representative.

All such agreements, documents and other items shall be in form and substance reasonably satisfactory to the Company.

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ARTICLE 8

REMEDIES FOR BREACHES OF THIS AGREEMENT

8.1 Indemnification by Equityholders.

(a) Subject to the terms, conditions and limitations set forth in this Article 8, in the event the Closing occurs, the Equityholders, individually and severally, and not jointly and severally, based on their respective Fully-Diluted Pro Rata Percentage, covenants and agrees to indemnify, defend and hold harmless Buyer and each of its respective Affiliates, and their respective successors and assigns (the “Buyer Indemnitees”) from and against any Adverse Consequences that any Buyer Indemnitee suffers or incurs (including any Adverse Consequences they suffer or incur after the end of any applicable survival period set forth in Section 8.3, provided that an indemnification claim with respect to such Adverse Consequence is made pursuant to this Article 8 prior to the end of any such applicable survival period) resulting from, arising out of, or caused by (i) any breach or inaccuracy of any representation or warranty made in Article 3, (ii) any breach or inaccuracy of any representation or warranty contained in any certificate delivered by the Company in connection with this Agreement, (iii) any breach of any covenant or agreement of the Company in this Agreement, (iv) any claim by any Equityholder or former Equityholder of the Company, or any other Person, not set forth on the Allocation Schedule, seeking to assert or based upon (A) ownership or rights to ownership of any Company Securities, (B) any rights of any Equityholder in his, her or its capacity as such (other than the right to receive such Equityholder’s portion of the Aggregate Merger Consideration pursuant to this Agreement or to otherwise enforce such Equityholder’s rights and remedies hereunder), including any option, preemptive rights or rights to notice or to vote, or (C) any rights under the certificate of incorporation or bylaws of the Company, in effect as of immediately prior to the Closing, whether or not facts relating to any of the foregoing have been disclosed in the Disclosure Schedule, (v) any claim by any Equityholder or former equityholder of the Company, or any other Person, not set forth on the Allocation Schedule (A) that his, her or its Company Securities were wrongfully repurchased by the Company or issued or sold to such Person in violation of any securities Laws, whether or not facts relating to the foregoing have been disclosed in the Disclosure Schedule, or (B) of a breach of fiduciary duty or otherwise by the directors and officers of the Company in connection with the approval of this Agreement and the transactions contemplated hereby, (vi) any inaccuracy on the Allocation Schedule, (vii) any Designated Excluded Liabilities, or (viii) any assertion or recovery by any Stockholder of the fair value, interest, and expenses or other amounts pursuant to appraisal rights exercised or purportedly exercised pursuant to the DGCL (it being understood that any Adverse Consequences relating thereto shall not include the pro rata share of the Aggregate Merger Consideration such asserting or recovering Stockholder would have received pursuant to this Agreement).

(b) Subject to the terms and conditions of this Article 8, in the event that the Closing occurs, each Equityholder, individually and severally, and not jointly and severally, covenants and agrees to indemnify, defend and hold harmless Buyer Indemnitees from and against any Adverse Consequences that any Buyer Indemnitee suffers or incurs (including any Adverse Consequences they suffer or incur after the end of any applicable survival period set forth in Section 8.3, provided that an indemnification claim with respect to such Adverse Consequence is made pursuant to this Article 8 prior to the end of any such applicable survival period) resulting from, arising out of, relating to, or caused by (i) any breach or inaccuracy of any representation or warranty of such Equityholder contained in the Letter Transmittal delivered by such Equityholder pursuant to Section 1.16(b) or in any certificate delivered by such Equityholder pursuant to this Agreement or the Letter of Transmittal, (ii) any failure of any Equityholder to have good, valid and marketable title to the issued and outstanding Company Securities or Unexercised Securities issued in the name of such holder, free and clear of all Liens, or (iv) any breach of any covenant or agreement applicable to such Equityholder in this Agreement.

(c) For purposes of clarifying the meaning of “individually and severally” with respect to indemnification by the Equityholders under this Section 8.1 and Section 9.1 (x) in the case of a claim for
indemnification against any Equityholder (a “Responsible Equityholder”) based on Section 8.1(b) or Section 9.1(a) (any such claims, “Equityholder Specific Claims”), (i) the representations and warranties and covenants and agreements underlying the Equityholder Specific Claims are made individually by such Responsible Equityholder as to itself, himself or herself only, and (ii) with respect to any Equityholder Specific Claims or any intentional fraud on the part of a Responsible Equityholder, no other Equityholder will be liable or obligated to indemnify any Buyer Indemnitee for any Adverse Consequences other than the Responsible Equityholder responsible for the Equityholder Specific Claim or intentional fraud, and, subject to the limitations set forth in this Article 8, such Responsible Equityholder will be liable for any such Adverse Consequences, and (y) in the case of a claim for indemnification against one or more Equityholders that does not constitute an Equityholder Specific Claim, each Equityholder’s indemnification obligation pursuant to this Article 8 and Article 9 shall be equal to such Equityholder’s Fully-Diluted Pro Rata Percentage of the applicable Adverse Consequences with respect to which the indemnification payment is made.

8.2 Indemnification by Buyer. Subject to the terms and conditions of this Article 8, in the event that the Closing occurs, Buyer will indemnify, defend and hold harmless the Equityholders, their respective Affiliates, and their respective successors and assigns (the “Equityholder Indemnitees”) from and against any Adverse Consequences they may suffer or incur (including any Adverse Consequences they may suffer or incur after the end of any applicable survival period, provided that an indemnification claim with respect to such Adverse Consequence is made pursuant to this Article 8 prior to the end of any applicable survival period) resulting from, arising out of, or caused by (a) any breach or inaccuracy of any representation or warranty made by Buyer or Merger Sub in Section 2.2 or (b) any breach of any covenant or agreement of Buyer in this Agreement.

8.3 Survival and Time Limitations.

(a) All representations, warranties, covenants and agreements of the Parties in this Agreement or any other certificate or document delivered pursuant to this Agreement will survive the Closing as set forth in this Section 8.3.

(b) The right to indemnification, payment of any losses or other remedy based on such representations and warranties, covenants, and obligations of the Company and the Equityholders set forth in this Agreement, will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant, or obligation.

(c) The representations and warranties of the Company and the Equityholders set forth in this Agreement will survive the Effective Time until 11:59 p.m. Mountain Time on the date that is fourteen (14) months following the Closing Date, and no Equityholder will have any liability with respect to any claim under Section 8.1(a)(i) unless Buyer notifies the Representative of such a claim in accordance with Section 8.6 or 8.7 before 11:59 p.m. Mountain Time on the date that is fourteen (14) months following the Closing Date; provided, however, that notwithstanding the foregoing (a) the representations and warranties of the Company set forth in in Section 3.11 (Tax Matters) (the “Excluded Representations”) will survive the Effective Time until the expiration of the applicable statute or period of limitations, and no Equityholder will have any liability with respect to any such claim under Section 8.1(a)(i) with respect to any Excluded Representation unless Buyer notifies the Representative of such a claim in accordance with Section 8.6 or 8.7, before the expiration of the applicable statute or period of limitations, (b) the representations and warranties of the Company or the Equityholders, as applicable, set forth in Sections 2.1(a) (Authorization of Transaction), 2.1(b) (Non-contravention), 2.1(c) (Brokers’ Fees), 2.1(d) (Company Securities), 3.1 (Organization, Qualification and Power), 3.2 (Subsidiaries), 3.3 (Authorization of Transaction), 3.4 (Capitalization), 3.5 (Non-contravention), 3.6 (Brokers’ Fees), the first sentence of 3.7(a) (Assets) and the first sentence of 3.13(b) (Intellectual Property) (collectively, the representations and warranties described in this clause (b) are referred to as the “Fundamental Representations”) will survive the Effective Time until 11:59 p.m. Mountain Time on the date that is seven (7) years following the Closing Date and no Equityholder will have any liability with respect to any claim under...
Section 8.1(a)(i) or Section 8.1(b)(i) with respect to any Fundamental Representation unless Buyer notifies the Representative or an Equityholder, as applicable, of such a claim in accordance with Section 8.6 or 8.7, on or before 11:59 p.m. Mountain Time on the date that is seven (7) years following the Closing Date, and (e) any claim of intentional fraud may be made at any time without limitation.

(d) The representations and warranties of Buyer set forth in this Agreement will survive the Effective Time until 11:59 p.m. Mountain Time on the date that is fourteen (14) months following the Closing Date, and Buyer will have no liability with respect to any claim under Section 8.2(a) unless the Representative notifies Buyer of such a claim in accordance with Section 8.6 or 8.7, on or before 11:59 p.m. Mountain Time on the date that is fourteen (14) months following the Closing Date; provided, however, that notwithstanding the foregoing the representations and warranties of Buyer set forth in Sections 2.2(b) (Authorization of Transaction), 2.2(c) (Non-contravention), and 2.2(d) (Brokers’ Fees) will survive the Effective Time until 11:59 p.m. Mountain Time on the date that is seven (7) years following the Closing Date and Buyer will have no liability with respect to any claim under Section 8.2(a) with respect to any such representations or warranties unless the Representative notifies Buyer of such a claim in accordance with Section 8.6 or 8.7, on or before 11:59 p.m. Mountain Time on the date that is seven (7) years following the Closing Date.

(e) All covenants and agreements contained in this Agreement, the Letters of Transmittal and the documents and certificates delivered pursuant to this Agreement and the Letters of Transmittal shall survive the Closing Date in accordance with their terms.

(f) Notwithstanding anything to the contrary contained herein, if Buyer or the Representative, as applicable, provides notice of a claim in accordance with the terms of this Agreement within the applicable time period set forth above, then liability for such claim will continue until such claim is fully resolved. The Parties acknowledge that the time periods set forth in this Section 8.3 for the assertion of claims under this Agreement are the result of arm’s-length negotiation among the Parties and that they intend for the time periods to be enforced as agreed by the parties.

8.4 Limitations on Indemnification.

(a) The Equityholders will have no liability pursuant to Section 8.1(a)(i) or Section 8.1(b)(i) unless and until Buyer Indemnitees have suffered aggregate Adverse Consequences for which the Buyer Indemnitees are entitled to be indemnified pursuant to Section 8.1(a)(i) or Section 8.1(b)(i), in excess of $150,000 (the “Threshold”), after which point the Equityholders will be obligated to indemnify Buyer Indemnitees from and against only such Adverse Consequences in excess of the Threshold; provided, that the foregoing limitations shall not apply in respect of any Adverse Consequences relating to (i) breaches of the Excluded Representations or the Fundamental Representations or (ii) any intentional fraud or intentionally fraudulent breach of a representation or warranty. Notwithstanding the foregoing, with respect to calculating whether the Threshold has been satisfied, the amount of any adjustment to the Cash Payment which was reduced pursuant to Section 1.10(c)(ii) shall be included in the calculation.

(b) With respect to claims for indemnification pursuant to Section 8.1(a)(ii) or Section 8.1(b)(ii) the aggregate maximum liability of all Equityholders shall not exceed the Escrow Amount (the “Cap”); provided, that the foregoing limitations shall not apply in respect of any Adverse Consequences relating to (i) breaches of the Excluded Representations, (ii) the Fundamental Representations, or (iii) any intentional fraud or intentionally fraudulent breach of a representation or warranty.

(c) With respect to any Adverse Consequences for which Buyer Indemnitees may be entitled to indemnification under this Article 8, Buyer Indemnitees will recover such Adverse Consequences first from the Escrow Fund.

(d) Any liability of the Equityholders under this Article 8 which has not been paid from the Escrow Fund shall be satisfied from the Equityholders or the individual Equityholder, as applicable, in cash. Subject to
Section 8.4(e), in no event will an Equityholder’s liability under this Agreement exceed the portion of the Aggregate Merger Consideration actually received by such Equityholder.

(e) Notwithstanding any other provision of this Agreement, nothing in this Agreement limits the liability of a party to another party for its own intentional fraud or any rights under any other document or agreement other than this Agreement; provided that in the event of intentional fraud by the Company, an Equityholder’s liability under this Agreement shall be limited to the portion of the Aggregate Merger Consideration actually received by such Equityholder. Nothing in this Section 8.4 shall limit the liability of a party to another party in the event the Closing does not occur.

(f) Each Indemnified Party will take commercially reasonable efforts to mitigate all Adverse Consequences upon and after becoming aware of any event that would reasonably be expected to give rise to such Adverse Consequences, including pursuing and attempting to recover all insurance proceeds and all other recoveries under each applicable insurance policy or contractual right to indemnification. Notwithstanding the foregoing: (i) no Indemnified Party shall (A) be required to take any action to mitigate any Losses incurred or suffered to the extent based upon, arising out of, with respect to or by reason of intentional fraud or intentionally fraudulent breach of a representation or warranty of any Equityholder, or, prior to the Closing, the Company, or (B) have any obligation to take any actions that unreasonably interfere with or impact the business of such Indemnified Party and (ii) the failure of an Indemnified Party to use such efforts to mitigate shall not constitute a defense to the Indemnifying Party’s obligations to indemnify the Indemnified Party pursuant to this Agreement.

(g) The amount of any Adverse Consequences that any Indemnified Party may be entitled to recover shall be reduced by (i) the amount of any third party insurance proceeds recovered by such Indemnified Party from any third party insurance carrier, net of any increase in insurance premiums or other costs, including deductibles, incurred in connection with recovery of such insurance proceeds; and (ii) the amount of any indemnity or contribution recovered by any Indemnified Party from any third party, net of any costs incurred in connection with recovering any such amounts. If an Indemnified Party receives any amounts under applicable insurance policies or third party indemnification or contribution payment subsequent to its receipt of an indemnification payment by the Indemnifying Party (including from the Escrow Fund), then such Indemnified Party will, without duplication, promptly reimburse the Indemnifying Party (net of costs and expenses of such recovery and resulting premium increases) for any payment made by such Indemnifying Party (including from the Escrow Fund) up to the amount received by such Indemnified Party.

(h) The Indemnified Parties shall not be entitled to recover any Adverse Consequences relating to any matter arising under one provision of this Agreement or any Ancillary Agreement to the extent that the Indemnified Party has already recovered such Adverse Consequences with respect to such matter pursuant to another provision of this Agreement or any Ancillary Agreement. Without limiting the foregoing, no Indemnified Person shall be entitled to recover Adverse Consequences with respect to any matter that was specifically taken into account in the calculation of the Aggregate Merger Consideration. If a state of facts exists that would allow a Buyer Indemnitee recovery under any of (x) Section 8.1(a)(i) or Section 8.1(a)(ii), on the one hand, or (y) Section 8.1(a)(iii) with respect to covenants and agreements set forth in Section 4.3, on the other hand, then such Buyer Indemnitee may only seek to recover for Adverse Consequences under Section 8.1(a)(i) or Section 8.1(a)(ii), as applicable.

8.5 Additional Limitations on Indemnification by Buyer.

(a) Buyer will have no liability pursuant to Section 8.2(a) unless and until the Equityholder Indemnitees have suffered aggregate Adverse Consequences for which the Equityholder Indemnitees are entitled to be indemnified pursuant to Section 8.2(a) in excess of the Threshold, after which point Buyer will be obligated to indemnify the Equityholder Indemnitees from and against only such Adverse Consequences in excess of the Threshold; provided, that the foregoing limitations shall not apply in respect of any Adverse Consequences relating to (i) breaches of the representations and warranties set forth in Sections 2.2(b) (Authorization of
(b) With respect to claims for indemnification pursuant to Section 8.2(a), the aggregate maximum liability of Buyer shall be the Cap; provided, that the foregoing limitation shall not apply in respect of any Adverse Consequences relating to (i) breaches of the representations and warranties set forth in Sections 2.2(b) (Authorization of Transaction), 2.2(c) (Non-contravention), and 2.2(d) (Brokers’ Fees) or (ii) any intentional fraud.

8.6 Direct Claims.

(a) In the event any Indemnified Party wishes to assert a claim for indemnification under this Article 8, such Indemnified Party shall deliver to Buyer, in the event the Indemnified Party is an Equityholder Indemnitee or the Representative if the Equityholders are the Indemnifying Party and, if the claim is an Equityholder Specific Claim, the applicable Equityholder (as applicable, the “Responding Party”), a certificate signed by such Indemnified Party (a “Claims Certificate”): (i) stating that an Indemnified Party has incurred, paid, reserved or accrued, or reasonably and in good faith anticipates that it may incur, pay, reserve or accrue, Adverse Consequences; (ii) stating the actual amount of Adverse Consequences incurred, paid, reserved or accrued or, if applicable, the estimated amount of such Adverse Consequences to the extent reasonably estimable; and (iii) specifying in reasonable detail (based upon the information then possessed by the Indemnified Party) the nature of the claim to which such Adverse Consequences are related and the specific provision of this Agreement that such Indemnified Party asserts entitles such Person to indemnification; provided, however, that any failure on the part of an Indemnified Party to so notify or provide the information in subparagraph (iii) to the Indemnifying Party shall not limit any of the obligations of the Indemnifying Party under this Article 8 (except to the extent such failure materially prejudices the defense of such Proceeding).

(b) The date of such delivery of a Claims Certificate is referred to herein as the “Claim Date” of such Claims Certificate (and the claims for indemnification contained therein). The Indemnified Party may update any Claims Certificate from time to time to reflect any changes in the actual or estimated amount of Adverse Consequences set forth therein or other information contained therein, by delivery of such updated Claims Certificate to the Responding Party. The Indemnified Party shall provide to the Responding Party any additional backup information or documentation with respect to the information set forth in such Claims Certificate as reasonably requested by the Responding Party.

(c) The Responding Party may object to a claim for indemnification set forth in a Claims Certificate by delivering to the Indemnified Party a written statement of objection to the claim made in the Claims Certificate (an “Objection Notice”), provided that, to be effective, such Objection Notice must (i) be delivered to the Responding Party prior to 5:00 p.m. Mountain Time on the thirtieth (30th) day following the Claim Date (such deadline, the “Objection Deadline” for such Claims Certificate and the claims for indemnification contained therein) and (ii) set forth in reasonable detail the nature of the objections to the claims in respect of which the objection is made.

(d) If the Responding Party objects in writing to any claim or claims by an Indemnified Party made in a Claims Certificate by delivering an effective Objection Notice prior to the Objection Deadline, the Indemnified Party and the Responding Party shall attempt in good faith for thirty (30) days after the Indemnified Party’s receipt of the Objection Notice to resolve such objection. If the Responding Party and the Indemnified Party shall so agree, a memorandum setting forth such agreement (the “Settlement Memorandum”) shall be prepared and signed by both parties, which Settlement Memorandum shall be final and conclusive and binding on the Responding Party. If no agreement can be reached pursuant to this Section 8.6(d) during the 30-day period for good faith negotiation, then the dispute may be resolved by any legally available means consistent with this Agreement.
8.7 Third-Party Claims.

(a) If a Person that is not an Indemnified Party or an Indemnifying Party initiates a claim, demand, dispute, lawsuit or arbitration (a “Third-Party Claim”) against any Indemnified Party with respect to any matter that the Indemnified Party might make a claim for indemnification against any Indemnifying Party under this Article 8, then the Indemnified Party must (i) promptly notify the Responding Party in writing of the existence of such Third-Party Claim, (ii) provide the Responding Party with reasonable detail regarding such Third Party Claim (based upon information then possessed by the Indemnified Party), including the nature of such Third Party Claim, the amount of Adverse Consequences reasonably and in good faith anticipated to be paid or incurred in connection therewith and the specific provision of this Agreement of this Agreement that entitles such Indemnified Party to indemnification, and (iii) deliver to the Responding Party copies of all pleadings, notices and communications received in writing by the Indemnified Party from such Person with respect to any Third Party Claim to the extent that receipt of such documents does not affect any privilege relating to any Indemnified Party; provided, however, that any failure on the part of an Indemnified Party to so notify or provide the information in subparagraph (iii) to the Indemnifying Party shall not limit any of the obligations of the Indemnifying Party under this Article 8 (except to the extent such failure materially prejudices the defense of such Proceeding).

(b) Upon receipt of the notice described in Section 8.7(a), the Indemnifying Party will have the right to defend the Indemnified Party against the Third-Party Claim with counsel reasonably satisfactory to the Indemnified Party, provided, that (i) the Responding Party notifies the Indemnified Party in writing within fifteen (15) days after the Indemnified Party has given notice of the Third-Party Claim that the Indemnifying Party will indemnify the Indemnified Party from and against any Adverse Consequences the Indemnified Party may suffer resulting from, arising out of, or caused by the Third-Party Claim, (ii) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against the Third-Party Claim and fulfill its indemnification obligations hereunder, (iii) the Third-Party Claim involves only money damages and does not seek an injunction or other equitable relief, (iv) settlement of, or an adverse judgment with respect to, the Third-Party Claim is not, in the good faith judgment of the Indemnified Party, likely to establish a precedential custom or practice adverse to the continuing business interests or the reputation of the Indemnified Party, (v) the Third-Party Claim does not involve or relate to any Intellectual Property of the Company or another Person or any Privacy Law, Privacy Policy or Privacy Procedure or compliance with or violation of any Law, and (vi) the Indemnifying Party conducts the defense of the Third-Party Claim actively and diligently. The Indemnifying Party will keep the Indemnified Party apprised of all material developments, including settlement offers, with respect to the Third-Party Claim and permit the Indemnified Party to participate in the defense of the Third-Party Claim. So long as the Indemnifying Party is conducting the defense of the Third-Party Claim in accordance with this Section 8.7(b), the Indemnifying Party will not be responsible for any attorneys’ fees or other expenses incurred by the Indemnified Party regarding the defense of the Third-Party Claim.

(c) In the event that any of the conditions under Section 8.7(b) is or becomes unsatisfied or the Indemnifying Party does not elect to defend against the Third Party Claim, (i) the Indemnified Party may defend against the Third Party Claim and consent to the entry of any judgment on or enter into any settlement with respect to, the Third-Party Claim in any manner it may reasonably deem appropriate, provided that the amount paid in the settlement or resolution of any such Third Party Claim to the third-party claimant shall not be determinative of the existence of a right to indemnification of the Indemnified Party hereunder or the amount of any Adverse Consequences relating to such matter, and (ii) the Indemnifying Parties will remain responsible for any Adverse Consequences the Indemnified Party may suffer resulting from, arising out of, or caused by the Third-Party Claim to the fullest extent provided in this Article 8. In the event the Indemnifying Party does not elect to defend against the Third Party Claim or the conditions set forth in subparagraphs (ii) or (vi) of Section 8.7(b) is or becomes unsatisfied, the Indemnifying Parties will reimburse the Indemnified Party promptly and periodically for the costs of defending against the Third-Party Claim (including reasonable attorneys’ fees and expenses).

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Except in circumstances described in Section 8.7(c), neither the Indemnified Party nor the Indemnifying Party will consent to the entry of any judgment or enter into any settlement with respect to the Third-Party Claim without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed.

8.8 Other Indemnification Matters. All indemnification payments under this Article 8 will be deemed adjustments to the Aggregate Merger Consideration. For purposes of determining whether there has been any misrepresentation or breach of a representation or warranty, and for purposes of determining the amount of Adverse Consequences resulting therefrom, all qualifications or exceptions in any representation or warranty relating to or referring to the terms “material”, “materiality”, “in all material respects”, “Material Adverse Effect” or any similar term or phrase shall be disregarded, it being the understanding of the Parties that for purposes of determining liability under this Article 8, the representations and warranties of the Parties contained in this Agreement shall be read as if such terms and phrases were not included in them. Each Equityholder agrees that (a) such Equityholder will not make any claim for indemnification against Buyer Indemnitee by virtue of the fact that such Equityholders or such Equityholder’s equityholders, directors, managers, partners, officers, employees, representatives or other Affiliates was an trustee, director, manager, officer, employee or agent of the Company, regardless of the nature of the Adverse Consequences claimed, with respect to any Proceeding brought by any Buyer Indemnitee against such Equityholder or any claim of any Buyer Indemnitee against such Equityholder in connection with this Agreement or the transactions contemplated hereby, and (b) such Equityholder has no claims or rights to contribution or indemnity from the Company with respect to any amounts paid by such Equityholder pursuant to this Article 8.

8.9 Setoff. Buyer shall be entitled, but with respect to the Earn-Out Payments not obligated, to recover any amounts due from the Equityholders under this Agreement by setting off such amounts against first the Escrow Fund and secondly, the Earn-Out Payments. The exercise of such right of set off by Buyer, whether or not ultimately determined to be justified, will not constitute a breach of this Agreement. Neither the exercise nor the failure to exercise such right of set off will constitute an election of remedies or limit Buyer in any manner in the enforcement of any other remedies that may be available to it.

8.10 Equityholder Approval. By executing and delivering a Joinder pursuant to Section 4.1, each Equityholder will be deemed to have approved of and consented to the provisions of this Article 8 and the appointment of the Representative.

8.11 Distribution of Escrow. Within five (5) Business Days of the expiration of the Indemnification Period, pursuant to the terms of the Escrow Agreement, the Escrow Agent will release to the Exchange Agent an amount (if positive) equal to (i) the balance of the Escrow Fund on such date, less (ii) the aggregate amount of all Adverse Consequences specified in any then-unresolved indemnification claims (a “Pending Claim”) made by any Buyer Indemnitees pursuant to Article 8 (such amount, “Pending Claims Amount”) which Pending Claims Amount shall remain in the Escrow Fund until the Pending Claim(s) is resolved pursuant to this Article 8. After the Indemnification Period, within five (5) Business Days after any Pending Claim has been resolved and satisfied, Buyer and Representative shall, pursuant to the terms of the Escrow Agreement, deliver a joint written instruction to the Escrow Agent to release out of the Pending Claims Amount an amount (if positive) equal to (i) the funds remaining in the Pending Claims Amount at such time, less (ii) the aggregate amount of all Adverse Consequences specified in any remaining Pending Claim.

8.12 Exclusive Remedy. If the Merger is consummated, the indemnification obligations of the Indemnifying Parties under this Article 8 shall constitute the sole and exclusive rights, claims and remedies of all Indemnified Parties under this Agreement, any certificates delivered by or on behalf of any Indemnifying Party pursuant to this Agreement, or any Letter Transmittal against the Indemnifying Parties, including claims of inaccuracy in or breach of any representation, warranty, covenant, agreement or obligation set forth in this Agreement, any certificate delivered by or on behalf of any Indemnifying Party pursuant to this Agreement or any Letter of Transmittal, except in the case of intentional fraud and equitable remedies (excluding the doctrine of equitable indemnification).
8.13 **Time to Bring Claims.** Subject to the limitations set forth in **Section 8.3**, pursuant to Section 8106, Title 10 of the Delaware Code, the Parties agree that this Agreement involves at least U.S. $100,000, and that any Proceeding arising out of or relating to this Agreement or the transactions contemplated by this Agreement may be brought within twenty (20) years of the date from which the underlying cause of action accrued; it being the intention of the Parties that, except as otherwise expressly provided in **Section 8.3** with respect to shorter periods of time, the Parties shall have the maximum amount of time permitted under the Laws of the State of Delaware to bring a Proceeding arising out of or relating to this Agreement or the transactions contemplated herein. Except as otherwise expressly provided in **Section 8.3** with respect to shorter periods of time, each Party hereby waives the right to assert any statute of limitations of less than twenty (20) years in defense of any such Proceeding; provided, however, this waiver shall not bar a defense to any Proceeding that was not commenced within the twenty (20) year time limit imposed by this **Section 8.13**.

**ARTICLE 9**

**TAX MATTERS**

The following provisions will govern the allocation of responsibility as between Buyer and the Equityholders for certain tax matters following the Closing Date:

9.1 **Tax Indemnification.** In addition to the indemnification provisions of **Article 8**, except to the extent such Taxes (i) are reflected as a liability for purposes of calculating Working Capital on the final Closing Statement, or are otherwise taken specifically into account in determining the Aggregate Merger Consideration, (ii) result from any events or transactions occurring after the Closing outside the Ordinary Course of Business, (iii) are based upon or arise out of any breach of the covenants or agreements made by Buyer in this Agreement that are to be performed at or prior to the Closing or by Buyer or the Company after the Closing, or (iv) result from the filing any election after the Closing (including any election under Section 338 of the Code) having retroactive effect to any Tax period ending on or prior to the Closing Date or the pre-Closing portion of any Straddle Period, the Equityholders shall be liable for, and shall indemnify, on an individual and several basis and not on a joint and several basis, and hold Buyer Indemnitees harmless from, (a) all Taxes of Equityholders, (b) all Taxes imposed on or incurred by the Company with respect to all Tax periods ending on or prior to the Closing Date, (c) all Taxes imposed on or incurred by the Company that relate to the portion of such Tax period ending on the Closing Date, and (e) all Taxes of any Person imposed on the Company as a transferee or successor, by contract or otherwise, which Taxes relate to an event or transaction occurring before the Closing.

9.2 **Tax Periods Ending on or Before the Closing Date.** Buyer will prepare, or cause to be prepared, and file, or cause to be filed, all Tax Returns for the Company for all Tax periods ending on or prior to the Closing Date ("Pre-Closing Returns") that are filed after the Closing Date. Buyer will provide the Representative with copies of any Pre-Closing Returns for the Representative’s reasonable review and comment, at least sixty (60) days prior to the due date thereof (giving effect to any extensions thereto). To the extent any Taxes reflected on any such Tax Return are Taxes for which the Equityholders are liable under **Section 9.1**, Buyer and the Representative, on behalf of Equityholders, will instruct the Escrow Agent to deliver to Buyer by wire transfer of immediately available funds, to the account designated by Buyer, the amount thereof, but only to the extent such Taxes are not reflected as a liability for purposes of calculating Working Capital on the final Closing Statement.

9.3 **Tax Periods Beginning Before and Ending After the Closing Date.** Buyer will timely prepare, or cause to be prepared, and timely file, or cause to be filed, all Tax Returns for the Company for Tax periods that begin before the Closing Date and end after the Closing Date (each such period being a "Straddle Period" and such Tax Returns being the "Straddle Period Returns"). Buyer will provide the Representative with copies of any Straddle Period Returns at least sixty (60) days prior to the due date thereof (giving effect to any extensions)
thereto), accompanied by a statement (the “Straddle Statement”) setting forth and calculating in reasonable detail the Taxes that relate to the portion of such Tax period ending on the Closing Date (the “Pre-Closing Taxes”). If the Representative agrees with the Straddle Period Returns and Straddle Statement, and to the extent any Pre-Closing Taxes reflected on any such Tax Return are Taxes for which the Equityholders are liable under Section 9.1, Buyer and the Representative shall instruct the Escrow Agent to deliver to Buyer by wire transfer of immediately available funds, to the account designated by Buyer, the amount of the Pre-Closing Taxes as shown on the Straddle Statement, but only to the extent such Taxes are not reflected as a liability for purposes of calculating Working Capital on the final Closing Statement. If, within twenty (20) Business Days after the receipt of any Pre-Closing Returns or the Straddle Period Returns and Straddle Statement, the Representative (a) notifies Buyer that it disputes the manner of preparation of the Pre-Closing Returns, Straddle Period Returns or the Pre-Closing Taxes calculated in the Straddle Statement and (b) provides Buyer with a statement setting forth in reasonable detail its computation of the Pre-Closing Taxes and its proposed form of the Straddle Period Returns and Straddle Statement, then Buyer and the Representative shall attempt to resolve their disagreement within five (5) days following the Representative’s notification of Buyer of such disagreement. If Buyer and the Representative are not able to resolve their disagreement, the dispute shall be submitted to the Accountants. The Accountants will resolve the disagreement within thirty (30) days after the date on which they are engaged or as soon as possible thereafter. The determination of the Accountants shall be binding on the Parties. The cost of the services of the Accountants will be borne by the Party (in the case of Representative, such cost will be borne by the Equityholders) whose calculation of the matter in disagreement differs the most from the calculation as finally determined by the Accountants. If each of the Party’s calculation differs equally from the calculation as finally determined by the Accountants, then such cost will be borne half by the Representative (on behalf of the Equityholders) and half by Buyer. For purposes of this Section, in the case of any Taxes that are imposed on a periodic basis and are payable for a Tax period that includes (but does not end on) the Closing Date, the portion of such Tax that relates to the portion of such Tax period ending on the Closing Date (i.e., the Pre-Closing Taxes) will (i) in the case of any property or similar ad valorem Taxes, be deemed to equal the amount of such Tax for the entire Tax period multiplied by a fraction the numerator of which is the number of days in the Tax period ending on the Closing Date and the denominator of which is the number of days in the entire Tax period, and (ii) in the case of any Taxes other than those covered in clause (i) above, be deemed to equal the amount that would be payable if the relevant Tax period ended on the Closing Date.

9.4 Cooperation on Tax Matters. Buyer and the Representative will cooperate, as and to the extent reasonably requested by the other Party, in connection with the filing and preparation of Tax Returns pursuant to this Article and any Proceeding related thereto. Such cooperation will include the retention and (upon the other Party’s request) the provision of records and information that are reasonably relevant to any such Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Buyer will retain all books and records with respect to Tax matters pertinent to the Company relating to any Tax period beginning before the Closing Date until thirty (30) days after the expiration of the statute or period of limitations of the respective Tax periods.

9.5 Tax Controversies. The Representative shall control any tax audits, tax disputes or administrative, judicial or other legal proceedings (each a “Tax Controversy”) related to any Tax Return or Taxes of the Company for any Tax period that ends on or prior to the Closing Date, and shall have the right to employ counsel and other advisors of its choice at its expense and to control the conduct of such Tax Controversy; provided, however, that in each case, (i) the controlling party shall notify the other of any such Tax Controversy, (ii) the controlling party shall allow the other to participate in any such Tax Controversy at its own expense, and (iii) the other party shall have the right to consent to any settlement or other resolution of such Tax Controversy (which consent shall not be unreasonably withheld, conditioned or delayed).

9.6 Certain Actions. Except as otherwise provided in this Article 9, without the prior written consent of the Representative (which consent shall not be unreasonably withheld, conditioned or delayed), Buyer shall not, and

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shall not permit any Person to, (i) voluntarily approach any Governmental Body regarding any Tax or Tax Return of the Company for any Tax period that ends on or prior to the Closing Date or the pre-Closing portion of any Straddle Period, including entering into any “voluntary disclosure program” with any Governmental Body, (ii) amend or re-file any Tax Return of the Company with respect to any Tax period that ends on or prior to the Closing Date or the pre-Closing portion of any Straddle Period, or (iii) consent to any extension or waiver of the limitation period applicable to any Tax Controversy in respect of Taxes for any Tax period that ends on or prior to the Closing Date or the pre-Closing portion of any Straddle Period.

9.7 Refunds. Any Tax refunds that are received by Buyer, the Company, or their respective Affiliates, and any amounts credited against Taxes payable to which any of them becomes entitled, that relate to Taxes of the Company for a Tax period (or portion thereof) ending on or before the Closing Date, in each case, to the extent such refunds or amounts were not taken into account in determining Working Capital on the final Closing Statement, shall be for the benefit of the Equityholders, and Buyer will pay to the Exchange Agent (or, with respect to any payments with respect to In the Money Options, to the Company), for distribution to the Equityholders, any such refund or the amount of any such credit (net of any expenses incurred by Buyer, the company, or their respective Affiliates in securing such refunds or credits) within fifteen (15) days after receipt thereof or actual reduction of Tax payable; provided, however, that the Equityholders shall not be entitled to any refunds or credits attributable to the carryback of a loss or credit from a taxable year or period (or portion thereof) beginning after the Closing Date. Buyer will cooperate with the Representative, and take commercially reasonable steps as may be requested by the Representative, to obtain any such refund or credit.

ARTICLE 10
TERMINATION

10.1 Termination of Agreement. Certain of the Parties may terminate this Agreement as provided below:

(a) Buyer and the Company may terminate this Agreement by mutual written consent at any time prior to the Closing.

(b) Buyer may terminate this Agreement by giving written notice to the Company at any time prior to the Closing (i) in the event Company or any Stockholder has breached any representation, warranty, or covenant contained in this Agreement which individually, or in the aggregate, would reasonably be expected result in a failure of the closing conditions set forth in Article 5 of this Agreement, and such breach remains uncurable for a period of ten (10) Business Days following delivery of notice thereof by Buyer; provided, however, that no cure period will be required for any such breach that by its nature cannot be cured, (ii) in the event that the Company has failed to obtain the approval of the Merger and of this Agreement of those Stockholders owning at least ninety-five percent (95%) of the outstanding Common Stock within fifteen (15) days of this Agreement or (iii) if the Closing shall not have occurred on or before the date that is thirty (30) days from the date of this Agreement (the "Outside Date") (unless the failure results primarily from Buyer itself breaching any representation, warranty, or covenant contained in this Agreement).

(c) The Company may terminate this Agreement by giving written notice to Buyer at any time prior to the Closing (i) in the event Buyer has breached any representation, warranty, or covenant contained in this Agreement which individually, or in the aggregate, would reasonably be expected to result in a failure of the closing conditions set forth in Article 6 of this Agreement, and such breach remains uncurable for a period of ten (10) Business Days following delivery of notice thereof by Buyer; provided, however, that no cure period will be required for any such breach that by its nature cannot be cured or (ii) if the Closing shall not have occurred on or before the Outside Date (unless the failure results primarily from the Company or any Stockholder breaching any representation, warranty, or covenant contained in this Agreement).
(d) By Buyer or the Company if there shall be any Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or if any Order enjoining Buyer, the Merger Sub, the Company or any Stockholder from consummating the transactions contemplated hereby is entered and such Order shall become final and non-appealable.

(e) By Buyer if there shall have been a Material Adverse Effect which shall not have been cured, if possible, within ten (10) Business Days immediately following written notice by Buyer to the Company of such Material Adverse Effect.

10.2 Effect of Termination. If this Agreement is terminated pursuant to Section 10.1, all further obligations of the Parties under this Agreement will terminate and this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Buyer, Merger Sub, the Company or the Equityholders; provided, however, that the provisions of Article 12 will survive the termination. Nothing in this Section 10.2 will release any Party from any liability for any breach of any representation, warranty, covenant or agreement in this Agreement or any Ancillary Agreement.

ARTICLE 11
DEFINITIONS

"Accountants" has the meaning set forth in Section 1.11 above.

"Adverse Consequences" means all penalties, fines, costs, amounts paid in settlement, liabilities, obligations, Taxes, Liens, losses, damages, deficiencies, reasonable out-of-pocket costs of investigation, court costs, and other expenses (including interest, penalties and reasonable attorneys' fees and expenses), whether in connection with Third Party Claims or claims among the Parties, or related to the enforcement of the provisions of this Agreement.

"Affiliate" means, with respect to the Person to which it refers, (a) a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, such Person, (b) any parent, sibling, descendant or spouse of such Person or of any of the Persons referred to in clause (a) and (c) any corporation, limited liability company, general or limited partnership, trust, association or other business or investment entity that directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with any of the foregoing individuals. For purposes of this definition, the term "control" of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies, whether through the ownership of voting securities, by contract or otherwise.

"Affiliated Group" means any affiliated group within the meaning of Section 1504(a) of the Code or any similar group defined under a similar provision of state, local, or non-U.S. law.

"Aggregate Merger Consideration" means an amount equal to (i) the Cash Payment, as adjusted pursuant to Article 1, plus (ii) the Eam-Out Payments (if any).

"Agreement" has the meaning set forth in the preface above.

"Allocation Schedule" has the meaning set forth in Section 1.17(b) above.

"Ancillary Agreements" means the Escrow Agreement, the Exchange Agent Agreement, the Non-Competition Agreements, that certain Engagement Letter to be entered into by and among Shareholder Representative Services LLC, the Company and certain of the Equityholders and each other agreement executed and delivered pursuant to this Agreement.
“**Anthem Earn-Out Payment**” has the meaning set forth in Section 1.12(a) above.

“**Anthem Revenue**” means the revenue of the Business in Fiscal 2019 attributable to the Application Service Provider Agreement, by and between WellPoint, Inc. (predecessor in interest to Anthem, Inc.) and the Company, dated January 1, 2014, as amended by Amendment No. 1, dated July 1, 2015, and any extension thereof or new Contract entered into between the Company and Anthem, Inc. or Anthem, Inc.’s Affiliates, as determined in accordance with GAAP. For purposes of clarity, Anthem Revenue includes any such revenue earned in Fiscal 2019 prior to and including the Closing Date.

“**Antitrust Laws**” means the HSR Act, the Sherman Antitrust Act of 1890, as amended, and the rules and regulations promulgated thereunder, the Clayton Act of 1914, as amended, and the rules and regulations promulgated thereunder, and any other Laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

“**Authorization**” means any registration, listing, waiver, license, permit, consent, approval, clearance or authorization.

“**Authors**” has the meaning set forth in Section 3.13(g) above.

“**Business**” means the business of providing the products or services that the Company provides, or actively considered providing, at any time during the twelve (12) months prior to the Closing Date.

“**Business Day**” means any day that is not a Saturday, Sunday or any other day on which banks are required or authorized by Law to be closed in Chicago, Illinois.

“**Buyer**” has the meaning set forth in the preface above.

“**Buyer Indemnitee**” has the meaning set forth in Section 8.1(a) above.

“**Buyer Plan**” has the meaning set forth in Section 4.13(a) above.

“**Cap**” has the meaning set forth in Section 8.4(b) above.

“**Cash**” means the aggregate amount of cash and cash equivalents of the Company as determined in accordance with GAAP; provided, that if such aggregate amount of cash and cash equivalents is a negative number, then it shall include the amount of all fees, penalties or interest related to such negative amount of Cash.

“**Cash Amount**” means the aggregate amount of Cash as of the Closing Date.

“**Cash Payment**” means the amount equal to (a) Twenty-Nine Million Dollars ($29,000,000), plus (b) the Working Capital Surplus, if any, minus (c) the Working Capital Deficit, if any, plus (d) the Cash Amount, minus (e) the Transaction Expenses Amount, minus (f) the Debt Amount.

“**Certificate of Merger**” has the meaning set forth in Section 1.2 above.

“**Certificates**” has the meaning set forth in Section 1.16(b) above.

“**Claim Date**” has the meaning set forth in Section 8.6(b) above.

“**Claims Certificate**” has the meaning set forth in Section 8.6(a) above.

“**Closing**” has the meaning set forth in Section 1.8 above.
“Closing Date” has the meaning set forth in Section 1.8 above.

“Closing Statement” has the meaning set forth in Section 1.11 above.

“COBRA” means the requirements of Part 6 of Subtitle B of Title I of ERISA and Code §4980B and of any similar state Law.

“Code” means the Internal Revenue Code of 1986, as amended, and any applicable rules and regulations thereunder, and any successor to such statute, rules or regulations.

“Common Stock” means the common stock of the Company, par value $0.0001 per share.

“Company” has the meaning set forth in the preface above.

“Company Insurance Agreements” has the meaning set forth in Section 3.16 above.

“Company IP Rights” means: (A) any and all Intellectual Property used in the conduct of the Business; and (B) any and all Company-Owned IP Rights.

“Company Option Plan” means that certain 2011 Equity Incentive Plan of the Company.

“Company-Owned IP Rights” means any and all Intellectual Property owned or purported to be owned by the Company.

“Company Securities” means all of the issued and outstanding shares of Common Stock and all issued and outstanding Options and Warrants, in each case all of which are set forth on Schedule 1.17(a).

“Company Software” means Software owned (or purported to be owned), developed, used, marketed, distributed, licensed, or sold by Company (other than non-customized third-party software licensed to Company for internal use on a non-exclusive basis).

“Company’s 2019 Forecast Consolidated Revenue Target” means Consolidated Revenue for Fiscal 2019 of at least $[***].

“Confidential Information” means all trade secrets and all other information, knowledge, ideas or data relating to the Company that is proprietary or confidential, including, but not limited to, any customer, vendor or partnership lists, customer data or information, prospective customer names, business strategies, models and techniques, management and marketing plans, financial statements, financial information and projections, know-how, pricing policies, pricing information and pricing methodologies, operational methods, methods of doing business, compensation, technical processes, formulae and algorithms, research and development, designs and design projects, inventions, hardware, software programs, files, software, code, reports, documents, manuals, forms, business plans and projects or prospective projects pertaining to the Company and including any information of others that the Company has agreed to keep confidential.

“Confidentiality Agreement” means that certain Mutual Non-Disclosure Agreement between the Company and Buyer dated as of August 3, 2018.

“Consent” means, with respect to any Person, any consent, approval, authorization, permission or waiver of, or registration, declaration or other action or filing with or exemption by such Person.
“Consolidated Earn-Out Revenue Payment” has the meaning set forth in Section 1.12(b).

“Consolidated Revenue” means the sum of (i) 100% of any myStrength Generated Revenue; plus (ii) 100% of the first $750,000 of Livongo Generated Revenue; plus (iii) 25% of any Livongo Generated Revenue in excess of $750,000. “Consolidated Revenue” shall be determined in accordance with GAAP and shall exclude any revenue of the Buyer or any of its Subsidiaries attributable to anything other than the Business.

“Contingent Transaction Fees” means [***] of any Earn-Out Payment payable to Covington Associates LLC pursuant to that certain letter agreement from Covington Associates LLC to the Company, dated December 26, 2018.

“Contract” means any oral or written contract, obligation, understanding, commitment, lease, license, note, loan, purchase order, letter of credit, indenture, security or pledge agreement, bid or other agreement.

“Debt” means any (a) obligations relating to indebtedness for borrowed money, (b) obligations evidenced by bonds, notes, debentures or similar instruments, (c) obligations in respect of capitalized leases (calculated in accordance with GAAP), (d) the principal or face amount of banker’s acceptances, surety bonds, performance bonds or letters of credit (in each case whether or not drawn), (e) obligations for the deferred purchase price of property or services, including, without limitation, the maximum potential amount payable with respect to earn-outs, purchase price adjustments or other payments related to acquisitions (other than deferred revenue and current accounts payable to suppliers and similar accrued liabilities incurred in the Ordinary Course of Business, paid in a manner consistent with industry practice and reflected as a current liability in the final calculation of Working Capital), (f) obligations under any existing interest rate, commodity or other swap, hedge or financial derivative agreement entered into by the Company prior to Closing, (g) Off-Balance Sheet Financing of the Company in existence immediately prior to the Closing, (h) indebtedness or obligations of the types referred to in the preceding clauses (a) through (g) of any other Person secured by any Lien on any assets of the Company, even though the Company has not assumed or otherwise become liable for the payment thereof, or (i) obligations in the nature of guarantees of obligations of the type described in clauses (a) through (g) above of any other Person, in each case together with all accrued interest thereon and any applicable prepayment, redemption, breakage, make-whole or other premiums, fees or penalties.

“Debt Amount” means all Debt of the Company as of the Closing plus, without duplication, any amounts required to fully pay or otherwise satisfy all such Debt (including, but not limited to, any prepayment premium or penalty, breakage costs, accrued interest and costs and expenses).

“Designated Courts” has the meaning set forth in Section 12.19 below.

“Designated Excluded Liabilities” means (a) any Debt of the Company as of the Closing Date that did not reduce the Final Cash Payment pursuant to Section 1.11 above, (b) all Transaction Expenses that did not reduce the Final Cash Payment pursuant to Section 1.11 above, (c) any obligation of the Company to indemnify or hold harmless any current or former director or officer of the Company for claims that relate to periods prior to the Closing, and (d) those items set forth on Schedule 1.11, in each case (i) including, without limitation, any of the foregoing arising from matters disclosed to Buyer or its Affiliates or otherwise referenced in this Agreement, and whether any related claim arises before or after the Closing and (ii) whether such matters are known or unknown, contingent or otherwise, whether accrued, liquidated, matured or unmatured.

“Designated Payables” has the meaning set forth in Section 4.8 above.

“Designated Payables Amount” means the dollar amount of the Designated Payables.
“DGCL” has the meaning set forth in the preliminary statements above.

“Disclosure Schedule” has the meaning specified in the preface to Article 3 above.

“Dissenting Shares” has the meaning specified in Section 1.18 above.

“Dissenting Share Payments” has the meaning specified in Section 1.18 above.

“Earn-Out Objections Statement” has the meaning specified in Section 1.18 above.

“Earn-Out Payments” means the Anthem Earn-Out Payment and the Revenue Consolidated Earn-Out Payment.

“Effective Time” has the meaning set forth in Section 1.2 above.

“EHR” means electronic health records.

“Employee Benefit Plan” means any (a) qualified or nonqualified Employee Pension Benefit Plan or deferred compensation or retirement plan, fund, program, or arrangement, (b) Employee Welfare Benefit Plan, (c) “employee benefit plan” (as such term is defined in ERISA §3(3)), (d) equity-based plan, program, or arrangement (including any stock option, stock purchase, stock ownership, stock appreciation, phantom stock, or restricted stock plan) or (e) other retirement, severance, bonus, profit-sharing, incentive, health, medical, surgical, hospital, indemnity, welfare, sickness, accident, disability, death, apprenticeship, training, day care, scholarship, tuition reimbursement, education, adoption assistance, prepaid legal services, termination, unemployment, vacation or other paid time off, change in control, and other similar plan, fund, program, or arrangement, whether written or unwritten, that is sponsored, maintained, or contributed to, or required to be maintained or contributed to, by the Company or any ERISA Affiliate for the benefit of any present or former officers, employees, agents, directors, consultants, or independent contractors of the Company or an ERISA Affiliate.

“Employee Pension Benefit Plan” has the meaning set forth in ERISA §3(2).

“Employee Welfare Benefit Plan” has the meaning set forth in ERISA §3(1).

“Environmental, Health, and Safety Requirements” means all Laws concerning public health and safety, worker and occupational health and safety, natural resources and pollution or protection of the environment, including all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any Hazardous Substances, materials, or wastes, chemical substances, or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, fuel oil products and byproducts, mold, asbestos, polychlorinated biphenyls, noise, or radiation.

“Equityholder” means the Stockholders, the holders of In the Money Warrants and the holders of In the Money Options.

“Equityholder Specific Claims” has the meaning set forth in Section 8.1(c) above.

“Equityholder Indemnitees” has the meaning set forth in Section 8.2 above.


“ERISA Affiliate” means any Person that, together with the Company, would be treated as a single employer under Section 414 of the Code or Section 4001 of ERISA and the regulations thereunder.

“Escrow Agent” has the meaning in Section 1.10(b) above.
“Escrow Agreement” has the meaning in Section 1.10(b) above.

“Escrow Amount” means an amount of cash equal to $2,900,000, together with any interest earned thereon.

“Escrow Fund” has the meaning in Section 1.10(b) above.

“Estimated Cash Payment” has the meaning set forth in Section 1.9 above.

“Estimated Closing Statement” has the meaning set forth in Section 1.9 above.

“Estimated Working Capital” means Representative’s good faith estimate of Working Capital as of the opening of business on the Closing Date as set forth in the Estimated Closing Statement.

“Exchange Agent” has the meaning set forth in Section 1.16(a) above.

“Exchange Agent Agreement” has the meaning set forth in Section 1.16(a) above.

“Excluded Representations” has the meaning set forth in Section 8.3(c) above.

“Expense Amount” means an amount of cash equal to $100,000.

“Expense Fund” means the Expense Amount held by the Representative as may be reduced by any amount expended by the Representative in performing its obligations hereunder.

“FDA” means the U.S. Food and Drug Administration.

“Federal Health Care Program” means any “federal health care program” as defined in 42 U.S.C. § 1320a-7b(f), including Medicare, state Medicaid programs, state CHIP programs, TRICARE and similar or successor programs with or for the benefit of any federal or state Governmental Body.

“Fiduciary” has the meaning set forth in ERISA §3(21).

“Final Cash Payment” has the meaning set forth in Section 1.11 above.

“Financial Statements” has the meaning set forth in Section 3.8(a) above.

“Firm” has the meaning set forth in Section 12.20(a) below.

“First Anthem Earn-Out Payment” has the meaning set forth in Section 1.12(a) above.

“First Anthem Milestone” means $[***] of Anthem Revenue.

“First Consolidated Earn-Out Payment” has the meaning set forth in Section 1.12(b) above.

“First Consolidated Milestone” means $[***] of Consolidated Revenue.


“Founders’ Escrow Amount” means an aggregate amount of $[***], which shall consist of, with respect to Scott Cousino, $[***] of his portion of the Estimated Cash Payment, and, with respect to Matt Sopcich, $[***] of his portion of the Estimated Cash Payment.
“Founders’ Escrow Fund” has the meaning set forth in Section 1.10(b)(ii) above.

“Founders” means Scott Cousino and Matt Sopcich.

“Fully-Diluted Per Share Pro Rata Percentage” means with respect to each share of Common Stock outstanding immediately prior to the Effective Time and each share of Common Stock issuable pursuant to In the Money Warrants and In the Money Options (excluding any shares of Common Stock subject to Out of the Money Warrants and Out of the Money Options) a percentage determined by dividing (a) one, by (b) the aggregate number of shares of Common Stock issued and outstanding immediately prior to the Effective Time, plus the aggregate number of shares of Common Stock issuable pursuant to In the Money Warrants and In the Money Options.

“Fully-Diluted Pro Rata Percentage” means, with respect to each Equityholder, a percentage determined by dividing (a) the number of shares held by such Equityholder immediately prior to the Effective Time, plus the number of shares of Common Stock issuable pursuant to In the Money Warrants and In the Money Options held by such Equityholder, by (b) the aggregate number of shares of Common Stock issued and outstanding immediately prior to the Effective Time plus the aggregate number of shares of Common Stock issuable pursuant to outstanding In the Money Warrants and In the Money Options (“Fully-Diluted Shares”).

“Fundamental Representation” has the meaning set forth in Section 8.3(c) above.

“GAAP” means generally accepted accounting principles and updates in effect from time to time in the United States as set forth in pronouncements of the Financial Accounting Standards Board (and its predecessors) and the American Institute of Certified Public Accountants.

“Governmental Body” means any (i) foreign or domestic federal, state, provincial, or local government, quasi-governmental body, or any entity exercising executive, legislative, judicial, regulatory, taxing or administrative functions of or pertaining to government or (ii) political or economic union or any department, agency, subdivision, council, supervisory authority, commission, court or other tribunal of any of the foregoing.

“Hazardous Substances” means (a) petroleum or petroleum products, flammable materials, explosives, radioactive materials, radon gas, lead-based paint, asbestos in any form, urea formaldehyde foam insulation, polychlorinated biphenyls (PCBs), transformers or other equipment that contain dielectric fluid containing PCBs and toxic mold or fungus of any kind or species, (b) any chemicals or other materials or substances which are defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “toxic substances,” “toxic pollutants,” “contaminants,” “pollutants,” or words of similar import under any applicable Environmental, Health, and Safety Requirements, and (c) any other chemical, material or substance exposure to which is prohibited, limited or regulated under any applicable Environmental, Health, and Safety Requirements.

“Health Care Laws” means all health care Laws to the extent applicable to the Company, including, without limitation, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395hh (the Medicare statute), including specifically, the Ethics in Patient Referrals Act, as amended (the Stark Law), 42 U.S.C. § 1395nn and all implementing Laws; Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (the Medicaid statute); the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); the False Claims Act, 31 U.S.C. §§ 3729-3733 (as amended), including the criminal false claims statutes, 18 U.S.C. §§ 287 and 1001; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58; the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a and 1320a-7b; the Beneficiary Inducement
Statute, 42 U.S.C. §1320a-7(a)(5), the Exclusion Laws, 42 U.S.C. § 1320a-7; HIPAA; the Public Health Service Act, 42 U.S.C. §§ 290dd-3, 290ee-3, including 42 C.F.R. Part 2; provisions governing the “meaningful use” of electronic health records under the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, including 42 C.F.R. Part 495; and all applicable implementing Laws; and any similar state and local Laws; and all applicable federal, state, and local licensing, certificate of need, corporate practice of medicine, fee splitting, professional licensure, patient confidentiality, use or disclosure of personal health care information and records, the hiring of employees or acquisition of services or supplies from Persons excluded from participation in Federal Health Care Programs, advertising or marketing of health care services, state anti-kickback or self-referral, regulatory and reimbursement Laws applicable to the Business and the services provided by the Company, its employees, or its affiliates.

“HHS” means the U.S. Department of Health and Human Services.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, the regulations issued respectively thereto, and any guidance issued by HHS interpreting the foregoing.


“Improvements” means all buildings, structures, fixtures, building systems and equipment, and all components thereof (including the roof, foundation and structural elements), included in the Leased Real Property.

“In the Money Options” has the meaning set forth in Section 1.7(d)(i) above.

“In the Money Warrants” has the meaning set forth in Section 1.7(c) above.

“Incidental License” means any (a) permitted use right in a nondisclosure agreement; (b) license with any current and former vendors, employees or contractors of the Company for the benefit of the Company; (c) non-exclusive license that is merely incidental to the transaction contemplated in such license, the commercial purpose of which is primarily for something other than such license, such as: (i) a sales or marketing Contract that includes a license to use the Trademarks of the Company for the purposes of promoting the Company products or services; (ii) a vendor Contract that includes permission for the vendor to identify the Company as a customer of the vendor; or (iii) a Contract to purchase or lease equipment, such as a photocopier, computer, or mobile phone that also contains a license of Intellectual Property; (d) non-exclusive licenses entered into by the Company in the Ordinary Course of Business; or (e) any non-exclusive licenses implied by Law to end-user customers for use of products or services.

“Indemnification Period” shall mean the date that is fourteen (14) months from the Closing Date.

“Indemnified Party” shall mean any Person that is or may be entitled to indemnification pursuant to Article 8.

“Indemnifying Party” shall mean any Person that is or may be obligated to indemnify and Indemnified Party pursuant to Article 8.

“Intellectual Property” means any and all intellectual property rights and other similar proprietary rights in any jurisdiction, whether registered or unregistered, including all rights and interests pertaining to or deriving from: (a) inventions, invention disclosures, discoveries and improvements (whether or not patentable), issued patents and patent applications, and counterparts claiming priority therefrom, and all related continuations, continuations-in-part, divisionals, reissues, re-examinations, substitutions, and extensions thereof (together,
“Patents”); (b) trademarks, service marks, logos, slogans, trade dress, trade names (including social media corporate identifiers), corporate names, domain names, other source or business identifiers (and all translations, adaptations, derivations and combinations of the foregoing), together with all of the goodwill of the business associated with each of the foregoing (together, “Trademarks”); (c) works of authorship and other copyrightable subject matter (including, but not limited to, advertising and promotional materials, software source code, compilations of data, and website content), whether registered or unregistered, and whether or not published (and all translations, derivative works, adaptations, compilations, and combinations of the foregoing) (together, “Copyrights”); (d) trade secrets, know-how, confidential information, inventions and discoveries, ideas, processes, proprietary information, customer lists, technical information, drawings and blueprints, information that derives economic value from not being generally known, and any other information that would constitute a trade secret as defined in the Uniform Trade Secrets Act and under corresponding foreign statutory Law and common law (together, “Proprietary Information”); (e) computer software (whether in source code, object code, html code, executable code, or other forms), algorithms, compilations and data, software systems (including purchased and in-house developed software), other information technology, and all versions, updates, corrections, enhancements, and modifications thereto, and all related documentation, developer notes, comments, training materials and annotations thereto (together, “Software”); and (f) all other intellectual property or proprietary rights and claims or causes of action arising out of or related to any infringement, misappropriation or other violation of any of the foregoing, including, without limitation, rights to recover for past, present and future violations thereof.

“Intellectual Property Licenses” means any Contract pursuant to which the Company uses Intellectual Property which is not owned by the Company or pursuant to which the Company grants any other Person the right to use any Intellectual Property owned by the Company.

“Interim Period” has the meaning set forth in Section 4.3 above.

“Joinder” has the meaning set forth in Section 5.7 above.

“Knowledge” means (a) in the case of an individual, the actual knowledge of such individual, upon reasonable inquiry, (b) in the case of the Company, the actual knowledge of the persons set forth on Schedule 11.2(a), (i) with respect to Messrs. Cousino, Sopcich and Miller upon reasonable inquiry and (2) with respect to Mr. Nieslanik and Ms. Falaschetti, Ms. Hirsch, and Ms. Alexander as would reasonably be expected to be known in the course of performing such individual’s duties to the Company, and (c) in the case of Buyer, the actual knowledge of the persons set forth on Schedule 11.2(b), in each case upon reasonable inquiry. For clarity, the duty of reasonable inquiry does not require the Company or any employee of the Company to conduct, have conducted, obtain, or have obtained any Intellectual Property clearance or prior art or use searches.

“Law” means any foreign or domestic federal, state or local law, statute, code, ordinance, regulation, rule, directive, consent agreement, Order, common law, constitution or treaty of any Governmental Body.

“Leased Real Property” means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property held by the Company.

“Leases” means all written or oral leases, subleases, licenses, concessions and other agreements, including all amendments, extensions, renewals, guaranties, and other agreements with respect thereto, pursuant to which the Company holds any Leased Real Property.

“Letters of Transmittal” has the meaning set forth in Section 1.16(b) above.

“Lien” means any lien, mortgage, pledge, encumbrance, charge, security interest, adverse claim, interest, preference, priority, proxy, transfer restriction (other than restrictions under the Securities Act and state securities laws), encroachment, Tax, order, community property interest, equitable interest, option, warrant, right of first refusal, easement, profit, license, servitude, right of way, covenant or zoning restriction.
“Livongo Generated Revenue” means all revenue of the Business recognized in Fiscal 2019, other than myStrength Generated Revenue, that is generated from leads sourced by employees of Buyer or any Subsidiary of Buyer (in each case other than employees of the Company who are employed by the Company immediately prior to the Closing Date).

“made available to Buyer” means contained and accessible for a continuous period of at least seventy-two hours immediately prior to the date of this Agreement in the Dropbox virtual data rooms hosted by the Company and made available to Buyer and its counsel.


“Material Adverse Effect” or “Material Adverse Change” means any event, change, development, or effect that, individually or in the aggregate, will or could reasonably be expected to have a materially adverse effect on (a) the business, operations, assets (including intangible assets), liabilities, operating results, employee, customer or supplier relations, or financial condition of the Company, or (b) the ability of the Company or the Equityholders to consummate the transactions contemplated by this Agreement; provided, however, that none of the following shall be deemed in themselves, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether a Material Adverse Effect or Material Adverse Change has occurred: (i) any change generally affecting the economy in the United States or any other geographic region in which the Company’s business is conducted; (ii) general financial, credit or capital market conditions or any changes therein; (iii) acts of war (whether or not declared), the commencement, continuation or escalation of a war, acts of armed hostility, sabotage or terrorism or other international or national calamity or any material worsening of such conditions threatened or existing as of the date hereof; (iv) changes generally applicable in the industry in which the Company operates; (v) changes in any laws applicable to the Company; (vi) any action taken which is expressly required by this Agreement; and (vii) in and of itself, any failure of the Company to meet its internal projections or forecasts for any earnings period (but not any event, occurrence, fact or condition giving rise or contributing to such failure); provided, further, that in the case of subclauses (i), (ii) and (iii), any such changes, facts, circumstances, conditions, events or effects will be taken into account in determining whether there has been or will be a Material Adverse Effect or Material Adverse Change to the extent such changes, facts, circumstances, conditions, events or effects disproportionately affect the Company as compared to others in the same industry.

“Material Contracts” means, collectively, the Contracts required to be listed in Section 3.14(a) of the Disclosure Schedule, the Leases, and the Company Insurance Agreements.

“Merger” has the meaning set forth in the preliminary statements above.

“Merger Sub” has the meaning set forth in the preface above.

“Most Recent Balance Sheet” means the balance sheet contained within the Most Recent Financial Statements.

“Most Recent Financial Statements” has the meaning set forth in Section 3.8(a) above.

“Most Recent Fiscal Month End” has the meaning set forth in Section 3.8(a) above.

“Most Recent Fiscal Year End” has the meaning set forth in Section 3.8(a) above.

“Multiemployer Plan” has the meaning set forth in ERISA §3(37).
“**myStrength Generated Revenue**” means all revenue of the Business recognized in Fiscal 2019 and generated from (i) any current customer of the Company (including all Anthem Revenue) or former customer of the Company (other than former customers of the Company that are customers of Buyer as of the Closing Date), (ii) any prospective customer of the Company as of the Closing Date, which prospective customers are identified on Schedule 1.12, (iii) any leads from prospects not set forth on Schedule 1.12 that are sourced after the Closing Date by employees of the Company (other than those that were already clients or partners of Buyer or its Subsidiaries at the time of sourcing), and (iv) any customer not set forth on Schedule 1.12 that is referred to the Company or the Buyer or any of its Subsidiaries by any of the Company’s current or former customers (other than those that were already clients or partners of Buyer or its Subsidiaries at the time of the referral). For purposes of clarity, all revenue recognized in Fiscal 2019 prior to and including the Closing Date shall be included in “**myStrength Generated Revenue**”.

“**Net Option Merger Consideration**” means, with respect to a share of Common Stock subject to an In the Money Option, the amount equal to (a) the Per Share Common Cash Payment, minus (b) the exercise price of such share of Common Stock subject to such Option determined immediately prior to the Effective Time, minus (c) the Per Share Escrow Amount, minus (d) the Per Share Expense Amount.

“**Net Warrant Merger Consideration**” means, with respect to a share of Common Stock subject to an In the Money Warrant, the amount equal to (a) the Per Share Common Cash Payment, minus (b) the exercise price of such share of Common Stock subject to such Warrant determined immediately prior to the Effective Time, minus (c) the Per Share Escrow Amount, minus (d) the Per Share Expense Amount.

“**Objection Deadline**” has the meaning set forth in Section 8.6(c) above.

“**Objection Notice**” has the meaning set forth in Section 8.6(c) above.

“Objections Statement” has the meaning set forth in Section 1.11 above.

“**Off-Balance Sheet Financing**” means (a) any liability of the Company under any sale and leaseback transactions which does not create a liability on the consolidated balance sheet of the Company and (b) any liability of the Company under any synthetic lease, Tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where the transaction is considered indebtedness for borrowed money for federal income Tax purposes but is classified as an operating lease in accordance with GAAP for financial reporting purposes.

“**Open Source Materials**” means any software or other material distributed as “free software,” “open source software” or under “copyleft” or other similar licensing or distribution terms or pursuant to any license identified as an “open source license” by the Open Source Initiative (www.opensource.org/licenses) (including the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), GNU Affero General Public License (AGPL), MIT License (MIT), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL) the Sun Industry Standards License (SISL) and the Apache License).

“**Optionholder Letter of Transmittal**” has the meaning set forth in Section 1.16(b) above.

“Options” means options to purchase shares of Common Stock, other than Warrants of the Company.

“Order” means any order, award, decision, injunction, judgment, ruling, decree, charge, writ, subpoena or verdict entered, issued, made or rendered by any Governmental Body or arbitrator.

“**Ordinary Course of Business**” means the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency).
"Organizational Documents" means (a) any certificate or articles of incorporation, bylaws, certificate or articles of formation, operating agreement or partnership agreement, (b) any documents comparable to those described in clause (a) as may be applicable pursuant to any Law and (c) any amendment or modification to any of the foregoing.

"Out of the Money Options" has the meaning set forth in Section 1.7(d)(ii) above.

"Out of the Money Warrants" has the meaning set forth in Section 1.7(c) above.

"Outside Date" has the meaning set forth in Section 10.1(b) above.

"Party" has the meaning set forth in the preface above.

"PCI-DSS" has the meaning set forth in the definition of Privacy Laws below.

"Pending Claim" has the meaning set forth in Section 8.11 above.

"Pending Claims Amount" has the meaning set forth in Section 8.11 above.

"Per Share Common Cash Payment" means with respect to each share of Common Stock outstanding immediately prior to the Effective Time and each share of Common Stock issuable pursuant to In the Money Warrants and In the Money Options (excluding any shares of Common Stock subject to Out of the Money Warrants and Out of the Money Options), the amount equal to (a) the sum of (i) the Cash Payment, plus (ii) the aggregate amount of the exercise price of all In the Money Warrants and In the Money Options, divided by (b) the aggregate number of shares of Common Stock outstanding immediately prior to the Effective Time plus the aggregate number of shares of Common Stock issuable pursuant to the In the Money Warrants and the In the Money Options (excluding any shares of Common Stock subject to Out of the Money Warrants and Out of the Money Options).

"Per Share Common Closing Consideration" means the amount equal to (a) the Per Share Common Cash Payment, minus (b) the Per Share Escrow Amount minus (c) the Per Share Expense Amount.

"Per Share Earn-Out Payments" means with respect to each share of Common Stock outstanding immediately prior to the Effective Time and each share of Common Stock issuable pursuant to In the Money Warrants and In the Money Options (excluding any shares of Common Stock subject to Out of the Money Warrants and Out of the Money Options), to the extent payable to the Equityholders in accordance with this Agreement, an amount equal to the product of (a) the aggregate Earn-Out Payments, if any, minus the applicable Contingent Transaction Fees, multiplied by (b) the Fully-Diluted Per Share Pro Rata Percentage.

"Per Share Escrow Amount" means with respect to each share of Common Stock outstanding immediately prior to the Effective Time and each share of Common Stock issuable pursuant to In the Money Warrants and In the Money Options (excluding any shares of Common Stock subject to Out of the Money Warrants and Out of the Money Options), the amount in cash equal to the quotient of (a) the Escrow Amount divided by (b) the aggregate number of shares of Common Stock outstanding immediately prior to the Effective Time plus the aggregate number of shares of Common Stock issuable pursuant to the In the Money Warrants and In the Money Options (excluding any shares of Common Stock subject to Out of the Money Warrants and Out of the Money Options).

"Per Share Escrow Release" means with respect to each share of Common Stock outstanding immediately prior to the Effective Time and each share of Common Stock issuable pursuant to In the Money Warrants and In the Money Options (excluding any shares of Common Stock subject to Out of the Money Warrants and Out of the Money Options), if and when released to the Equityholders from time to time in accordance with this Agreement and the Escrow Agreement, an amount equal to the product of (a) the aggregate amount released from the Escrow Fund, multiplied by (b) the Fully-Diluted Per Share Pro Rata Percentage.

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"Per Share Expense Amount" means with respect to each share of Common Stock outstanding immediately prior to the Effective Time and each share of Common Stock issuable pursuant to In the Money Warrants and In the Money Options (excluding any shares of Common Stock subject to Out of the Money Warrants and Out of the Money Options), the amount in cash equal to the quotient of (a) the Expense Amount divided by (b) the aggregate number of shares of Common Stock outstanding immediately prior to the Effective Time plus the aggregate number of shares of Common Stock issuable pursuant to the In the Money Warrants and In the Money Options (excluding any shares of Common Stock subject to Out of the Money Warrants and Out of the Money Options).

"Per Share Expense Fund Release" means with respect to each share of Common Stock outstanding immediately prior to the Effective Time and each share of Common Stock issuable pursuant to In the Money Warrants and In the Money Options (excluding any shares of Common Stock subject to Out of the Money Warrants and Out of the Money Options), if and when released to the Equityholders from time to time, an amount equal to the product of (a) the aggregate amount released from the Expense Fund, multiplied by (b) the Fully-Diluted Per Share Pro Rata Percentage.

"Permit" means any license, import license, export license, franchise, Consent, permit, certificate, certificate of occupancy or Order issued by any Person.

"Permitted Lien" means any (a) liens for Taxes not yet due or payable or for Taxes that the Company is contesting in good faith through appropriate proceedings in a timely manner, in each case for which adequate reserves have been established and shown on the Most Recent Balance Sheet, (b) liens of landlords, carriers, warehousemen, workmen, repairmen, mechanics, materialmen and similar liens arising in the Ordinary Course of Business and not incurred in connection with the borrowing of money, (c) restrictions, easements, covenants, reservations, rights of way or other similar matters of title to the Leased Real Property of record, (d) zoning ordinances, restrictions, prohibitions and other requirements imposed by any Governmental Body, all of which do not materially interfere with the conduct of the business of the Company, and (e) any right, restriction or covenant associated with any license of Intellectual Property.

"Person" means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

"Personal Information" means any information in any form or format that identifies or could reasonably be used to identify an individual and is the subject of Privacy Laws, including, without limitation, Protected Health Information; "Personal Information", “Sensitive Personal Information”, “Personally Identifiable Information”, and “Personal Data”, as such terms are defined under Privacy Laws; and all financial, billing and medical information and any other information of the Company’s website visitors, customers, those persons included in any demographic or other analysis performed for customers, or other information collected by the Company or its authorized agents, employees, or subcontractors in connection with the products and services of the Company that could be reasonably associated with an identifiable individual.

"PPACA" has the meaning set forth in Section 3.19(a)(v) above.

"Pre-Closing Returns" has the meaning set forth in Section 9.2 above.

"Pre-Closing Taxes" has the meaning set forth in Section 9.3 above.

"Preliminary Allocation Schedule" has the meaning set forth in Section 1.17(a) above.

"Privacy Laws" means: (x) Laws or standards imposed by self-regulatory organizations that apply to the creation, receipt, maintenance, transmission, access, processing, use, disclosure, transfer, privacy, security, confidentiality, or breach of Personal Information or the rights of any individual who is a subject of Personal
CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II)
WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED, AND THE EXCLUDED TERMS HAVE BEEN MARKED AT THE
APPROPRIATE PLACE WITH THREE ASTERISKS [***].

Information, to the extent applicable to the Company, including, without limitation: (i) the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq.;
(ii) HIPAA; (iii) the Public Health Service Act, 42 U.S.C. §§ 290dd-3, 290ee-3, including 42 C.F.R. Part 2; (iv) provisions governing the “meaningful
use” of electronic health records under the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education
Reconciliation Act of 2010, including 42 C.F.R. Part 495; (v) the Payment Card Industry Data Security Standard (“PCI-DSS”) and all rules and
operating regulations of the credit card associations (such as Visa, MasterCard, American Express or Discover Network); (vi) the Federal Trade
Commission Act, 15 U.S.C. § 41, et seq.; (vii) the federal Telephone Consumer Protection Act; (viii) non-U.S. Laws governing data protection,
including the General Data Protection Regulation (EU) 2016/679; (iv) any similar state or local Laws; and each of (i) through (iv) as amended from
time to time; and (y) all implementing regulations, regulatory guidance and requirements and contractual requirements relating to privacy and data
security pursuant to all such Laws, each as amended from time to time.

“Privacy Obligations” has the meaning set forth in Section 3.14(a) above.

“Privacy Policies” has the meaning set forth in Section 3.14(a) above.

“Proceeding” means any action, audit, lawsuit, litigation, investigation or arbitration (in each case, whether civil, criminal or administrative)
pending by or before any Governmental Body or arbitrator.

“Process” means, with respect to Personal Information, to create, receive, maintain, transmit, process, collect, use, disclose, or transfer such
Personal Information.

“Prohibited Transaction” has the meaning set forth in ERISA §406 and Code §4975.

“Protected Communication” has the meaning set forth in Section 12.20(b) below.

“Protected Health Information” has the meaning set forth in 45 C.F.R. § 160.103.

“Receivables” has the meaning set forth in Section 3.8(c) above.

“Remaining Designated Payables” means the bills payable set forth in Schedule 4.8.2.

“Representative” has the meaning set forth in the preface above.

“Representative Losses” has the meaning set forth in Section 12.16(b) below.

“Requisite Vote” has the meaning specified in Section 3.3(c) above.

“Responding Party” has the meaning set forth in Section 8.6(a) above.

“Responsible Equityholder” has the meaning set forth in Section 8.1(c) above.

“Retained Employee” has the meaning specified in Section 4.13(a) above.

“Second Anthem Earn-Out Payment” has the meaning set forth in Section 1.12(a) above.

“Second Anthem Milestone” means $[***] of Anthem Revenue.

“Second Consolidated Earn-Out Payment” has the meaning set forth in Section 1.12(b) above.

“Second Consolidated Milestone” means $[***] of Consolidated Revenue.
“Securities Act” means the Securities Act of 1933, as amended, and any applicable rules and regulations thereunder, and any successor to such statute, rules or regulations.

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

“Settlement Memorandum” has the meaning set forth in Section 8.6(d) above.

“Significant Business Partner” means any of the Company’s (i) top twenty (20) vendors, service providers or suppliers, based on amounts paid by the Company in the twelve (12) months preceding the Most Recent Fiscal Month End; or (ii) top twenty (20) customers or clients of the Company, based on revenue recognized in the twelve (12) months preceding the Most Recent Fiscal Month End.

“Stockholder” or “Stockholders” means each holder of shares of Common Stock.

“Stockholder Letter of Transmittal” has the meaning set forth in Section 1.16(b) above.

“Stockholder Materials” has the meaning specified in Section 4.1(a) above.

“Straddle Period” has the meaning set forth in Section 9.3 above.

“Straddle Period Returns” has the meaning set forth in Section 9.3 above.

“Straddle Statement” has the meaning set forth in Section 9.3 above.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association, or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof or (b) if a limited liability company, partnership, association, or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons owns a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be or control any manager, management board, managing director or general partner of such business entity (other than a corporation). The term “Subsidiary” shall include all Subsidiaries of such Subsidiary.

“Surviving Corporation” has the meaning set forth in Section 1.1 above.

“Systems” has the meaning set forth in Section 3.21 above.

“Target Group” has the meaning set forth in Section 12.20(b) below.

“Tax” or “Taxes” means any federal, state, local and foreign net income, alternative or add-on minimum, estimated, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, capital profits, lease, service, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, abandoned property or escheat, environmental or windfall profit tax, customs duty or other tax, governmental fee or other like assessment or charge (and any liability incurred or borne by virtue of the application of Treasury Regulation Section 1.1502-6 (or any similar or corresponding provision of state, local or foreign Law), as a transferee or successor, by contract or otherwise), together with all interest, penalties, additions to tax and additional amounts with respect thereto.
“Tax Controversy” has the meaning set forth in Section 9.5 above.

“Tax Return” means any return, declaration, report, claim for refund, or information return or statement filed or required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Third-Party Claim” has the meaning set forth in Section 8.7(a) above.

“Third-Party IP Rights” means any Intellectual Property owned by a third party.

“Threshold” has the meaning set forth in Section 8.4(a) above.

“Transaction Expenses” means any and all (a) legal, accounting, tax, financial advisory, environmental consultants and other professional or transaction related costs, fees and expenses incurred by the Company in connection with this Agreement or in investigating, pursuing or completing the transactions contemplated hereby (including any amounts owed to any consultants, auditors, accountants, attorneys, brokers or investment bankers), (b) payments, bonuses or severance which become due or are otherwise required to be made as a result of or in connection with the Closing or as a result of any change of control or other similar provisions, including any payments made in connection with the Transaction Bonus Release Letters and similar payments made in connection with the transactions contemplated hereby and (c) payroll, employment or other Taxes, if any, required to be paid by Buyer (on behalf of the Company) or the Company with respect to the amounts payable pursuant to this Agreement, the amounts described in clause (a) and (b), or the forgiveness of any loans or other obligations owed by Equityholders or employees in connection with the transactions contemplated by this Agreement.

“Transaction Expenses Amount” means an amount equal to all Transaction Expenses that have not been paid prior to the Closing, whether or not the Company has been billed for such expenses.

“Treasury Shares” has the meaning set forth in Section 1.7(b).

“Unaudited 2018 Financial Statements” has the meaning set forth in Section 3.8(a) above.

“Unexercised Securities” means any unexercised, unexpired and outstanding Options or Warrants.

“Unutilized Threshold” means to the extent that Buyer Indemnitees have not suffered Adverse Consequences that they are entitled to be indemnified pursuant to Section 8.1(a)(i) and Section 8.1(b)(i) in excess of the Threshold, the difference between $150,000 and the Adverse Consequences suffered by the Buyer Indemnitees to which they are entitled to be indemnified pursuant to Section 8.1(a)(i) and Section 8.1(b)(i).

“Warrants” means warrants to purchase capital stock of the Company, all of which are set forth on Schedule 1.17(a), and which schedule sets for the number of shares of Common Stock subject to each Warrant and the exercise price per share of Common Stock subject to such Warrant.

“Working Capital” means an amount, in all instances calculated in accordance with Section 1.15 above, equal to (a) the amount of the current assets (excluding the Cash Amount and income Tax assets) of the Company and its Subsidiaries, minus (b) the amount of the current liabilities including, for the sake of clarity, the Remaining Designated Payables (excluding Debt, income Tax liabilities, and fifty percent (50%) of deferred revenue) and in each case as of the opening of business on the Closing Date. For purposes of clarity, Transaction Expenses shall not be accrued as a liability but shall be paid by Equityholders, and the current liabilities shall take into account the payment of the Designated Payables. Any adjustments related to the implementation of ASC 606, including any ASC 842 lease standard adjustments, implemented after January 1, 2019 shall not be taken into account in connection with the calculation of Working Capital.
"Working Capital Deficit" means the amount by which the Working Capital as of the opening of business on the Closing Date is less than $0.

"Working Capital Surplus" means the amount by which the Working Capital as of the opening of business on the Closing Date is greater than $0.

ARTICLE 12

MISCELLANEOUS

12.1 **Press Releases and Public Announcements.** Neither the Company, the Representative nor any Equityholder shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of Buyer; provided, however, that Buyer shall provide the Company and the Representative (following Closing) a reasonable opportunity, but in no event less than two (2) Business Days prior to the anticipated release date, to review and comment on any press release. Notwithstanding the foregoing, Buyer may make any public disclosure, without obtaining any prior consent, concerning this Agreement and the transactions contemplated thereby that it believes in good faith is required by securities Laws or listing standards applicable to Buyer.

12.2 **No Third-Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

12.3 **Entire Agreement.** This Agreement (including the documents referred to herein) and the Confidentiality Agreement (which remains in effect) constitute the entire agreement among the Parties and supersede any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof or thereof.

12.4 **Succession and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of Buyer; provided, however, that Buyer may (a) assign any or all of its rights and interests hereunder to one or more of its controlled Affiliates and designate one or more of its controlled Affiliates to perform its obligations hereunder (in any or all of which cases Buyer nonetheless shall remain responsible for the performance of all of its obligations hereunder), (b) assign its rights under this Agreement for collateral security purposes to any lenders providing financing to Buyer, the Company or any of their respective Subsidiaries or Affiliates or (c) assign its rights under this Agreement to any Person that acquires Buyer, the Company or any of its assets, provided that any such assignment will not relieve Buyer of its obligations hereunder.

12.5 **Counterparts.** This Agreement may be executed in one or more counterparts (including by means of facsimile), each of which shall be deemed an original but all of which together will constitute one and the same instrument.

12.6 **Headings.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

12.7 **Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed given: (a) when delivered personally by hand (with written confirmation of receipt), (b) the day when transmitted via electronic mail to the address set out below if the recipient confirms receipt (or, the first Business Day following such receipt if the day is not a Business Day); or (c) one (1) Business Day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses and facsimile

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numbers (or to such other address or facsimile number as a party may have specified by notice given to the other party pursuant to this provision):

If to the Company prior to Closing:  
myStrength, Inc.

Copy to:  
Perkins Coie LLP

If to Equityholders (after Closing) or the Representative:  
Shareholder Representative Services LLC

If to Buyer or Merger Sub:  
General Counsel  
Attention: Erica Palsis  
Livongo Health Inc.

Copy to:  
McDermott Will & Emery LLP

Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

12.8 Governing Law. This Agreement and any claim, controversy or dispute arising out of or related to this Agreement, any of the transactions contemplated hereby, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties, whether arising in contract, tort, equity or otherwise, shall be governed by and construed in accordance with the domestic Laws of the State of Delaware (including in respect of the statute of limitations or other limitations period applicable to any such claim, controversy or dispute), without giving effect to any choice or conflict of Law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

12.9 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Buyer and the Representative. No waiver by any Party of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

12.10 Injunctive Relief. The Representative and the Company hereby agree that, in the event of breach of this Agreement, damages may be difficult, if not impossible, to ascertain, that irreparable damage may occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that, in addition to and without limiting any other remedy or right it may have, Buyer shall be entitled to an injunction or other equitable relief in any court of competent jurisdiction, without any necessity of proving damages or any requirement for the posting of a bond or other security, enjoining any such breach and enforcing specifically the terms and provisions. The Representative and the Company hereby waives any and all defenses that the Representative or the Company may have on the ground of lack of jurisdiction or competence of the court to grant such an injunction or other equitable relief.

12.11 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.  

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12.12 **Expenses.** Except as otherwise expressly provided in this Agreement, each Party will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

12.13 **Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word “including” shall mean including without limitation.

12.14 **Incorporation of Exhibits and Disclosure Schedule.** The Exhibits, Disclosure Schedule and other Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

12.15 **Confidentiality.** Subject to Section 4.11(c), the Representative and each Equityholder shall treat and hold as confidential all of the terms and conditions of the transactions contemplated by this Agreement and the other Ancillary Agreements, including, without limitation, the Aggregate Merger Consideration and each of its components; provided, however, that the Representative or any Equityholder may disclose such information (a) as required by law or (b) to its employees, advisors, agents or consultants and, in the case of Representative, to the Equityholders, in each case on an as-needed basis so long as any such Person is bound by a confidentiality obligation with respect thereto.

12.16 **Representative.**

(a) By voting in favor of the adoption of this Agreement, the approval of the principal terms of the Merger, and the consummation of the Merger or participating in the Merger and receiving the benefits thereof, including the right to receive the consideration payable in connection with the Merger, each Equityholder shall be deemed to have approved the designation of, and hereby designates, Shareholder Representative Services LLC as the Representative for all purposes in connection with this Agreement and any Ancillary Agreement, including to give and receive notices and communications in connection with this Agreement and the transactions contemplated hereby, to authorize and agree to adjustments to the Cash Payment and Earn-Out Amount under Article 1 and other applicable provisions of this Agreement, to authorize distribution of the Amount, to take all actions on behalf of the Equityholders pursuant to this Agreement, Escrow Agreement and any Ancillary Agreement to which such Equityholder is a party, and to take all actions necessary or appropriate in the judgment of the Representative for the accomplishment of the foregoing. More specifically, the Representative shall have the authority to make all decisions and determinations and to take all actions (including giving Consents or agreeing to any amendments to this Agreement, Escrow Agreement or any Ancillary Agreement to which it is a party or to the termination hereof or thereof) required or permitted hereunder on behalf of each such Equityholder, and any such action, decision or determination so made or taken shall be deemed the action, decision or determination of each such Equityholder, and any notice, communication, document, certificate or information required (other than any notice required by Law or under the Company’s Organizational Documents) to be given to any Equityholder hereunder or pursuant to any Ancillary Agreement shall be deemed so given if given to the Representative. Without limiting the generality of the foregoing, the Representative shall be authorized, in connection with the Closing, to execute all certificates, documents and agreements on behalf of and in the name of the Equityholders necessary to effectuate the Closing and related transactions. The Representative shall be authorized to take all actions on behalf of the Equityholders in connection with any claims made under Articles 8 or 9 of this Agreement (including Equityholder Specific Claims), to defend or settle such claims, and to make payments in respect of such claims on behalf of the Equityholders. The Representative may resign at any time. The Equityholders may remove or replace the Representative by a vote of holders that own a majority of the Common Stock immediately prior to Closing upon not less than ten (10) Business Days’ prior written notice to Buyer. No bond will be required of the Representative. Notices or communications to or from the Representative from and after Closing will constitute notice to or from each of the Equityholders.

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The Representative will incur no liability of any kind with respect to any action or omission by the Representative in connection with the Representative’s services pursuant to this Agreement and any Ancillary Agreement, except in the event of liability directly resulting from the Representative’s gross negligence or willful misconduct. The Representative shall not be liable for any action or omission pursuant to the advice of counsel. The Equityholders will indemnify, defend and hold harmless the Representative from and against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses (including the fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, “Representative Losses”) arising out of or in connection with the Representative’s execution and performance of this Agreement and any agreements ancillary hereto, in each case as such Representative Loss is suffered or incurred; provided, that in the event that any such Representative Loss is finally adjudicated to have been directly caused by the gross negligence or willful misconduct of the Representative, the Representative will reimburse the Equityholders the amount of such indemnified Representative Loss to the extent attributable to such gross negligence or willful misconduct. If not paid directly to the Representative by the Equityholder, any such Representative Losses may be recovered by the Representative from (i) the funds in the Expense Fund, (ii) the amounts in the Escrow Fund at such time as remaining amounts would otherwise be distributable to the Equityholders, and (iii) from any Earn-out Payments at such time as any such amounts would otherwise be distributable to the Equityholders; provided, that while this section allows the Representative to be paid from the aforementioned sources of funds, this does not relieve the Equityholders from their obligation to promptly pay such Representative Losses as they are suffered or incurred, nor does it prevent the Representative from seeking any remedies available to it at law or otherwise. In no event will the Representative be required to advance its own funds on behalf of the Equityholders or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of, or provisions limiting the recourse against non-parties otherwise applicable to, the Equityholders set forth elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Representative under this section. The foregoing indemnities will survive the Closing, the resignation or removal of the Representative or the termination of this Agreement.

(c) A decision, act, consent or instruction of the Representative will constitute a decision of all the Equityholders and will be final, binding and conclusive upon each such Equityholder, and Buyer may rely upon any such decision, act, consent or instruction of the Representative as being the decision, act, consent or instruction of each such Equityholder. Buyer Indemnitees are hereby relieved from any Adverse Consequences to any Person for any acts done by such Buyer Indemnitees in accordance with such decision, act, consent or instruction of the Representative.

(d) Notwithstanding anything in this Section 12.15 to the contrary, the Representative shall have no power or authority to act on behalf of any Equityholder with respect to any Equityholder Specific Claim.

(e) The Equityholders will not receive any interest or earnings on the Expense Fund and irrevocably transfer and assign to the Representative any ownership right that they may otherwise have had in any such interest or earnings. The Representative will not be liable for any loss of principal of the Expense Fund other than as a result of its gross negligence or willful misconduct. The Representative will hold these funds separate from its corporate funds, will not use these funds for its operating expenses or any other corporate purposes and will not voluntarily make these funds available to its creditors in the event of bankruptcy. As soon as practicable following the completion of the Representative’s responsibilities, the Representative will deliver any remaining balance of the Expense Fund to the Exchange Agent for further distribution to the Equityholders. For tax purposes, the Expense Fund will be treated as having been received and voluntarily set aside by the Shareholders at the time of Closing.

12.17 Schedules. Nothing in the schedules hereto shall be deemed adequate to disclose an exception to a representation or warranty made herein unless the schedule identifies the exception with reasonable particularity and describes the relevant facts in reasonable detail. Without limiting the generality of the foregoing, the mere listing (or inclusion of a copy) of a document or other item shall not be deemed adequate to disclose an exception.
to a representation or warranty made herein (unless the representation or warranty has to do with the existence of the document or other item itself). The Parties intend that each representation, warranty, and covenant contained herein shall have independent significance. If any Party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, or covenant. The section numbers in the Disclosure Schedule correspond to the section numbers of the representations and warranties in Article 3, provided, however, that any information disclosed in the Disclosure Schedule under any section number shall be deemed to be disclosed and incorporated into any other section number under Article 3 where such disclosure would be appropriate and such appropriateness is reasonably apparent from the face of such disclosure. Nothing in the Disclosure Schedule is intended to broaden the scope of any representation or warranty contained in Article 3 or to create any covenant. Inclusion of any item in the Disclosure Schedule (a) does not represent a determination that such item is material or establish a standard of materiality, (b) does not represent a determination that such item did not arise in the Ordinary Course of Business, (c) does not represent a determination that the transactions contemplated by this Agreement require the consent of third parties, and (d) shall not constitute, or be deemed to be, an admission to any third party concerning such item.

12.18 Waiver of Jury Trial. EACH OF THE PARTIES WAIVES THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OR RELATED TO THIS AGREEMENT IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY AFFILIATE OF ANY OTHER SUCH PARTY, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR OTHERWISE. THE PARTIES AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEeks, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

12.19 Exclusive Venue. THE PARTIES AGREE THAT ALL DISPUTES, LEGAL ACTIONS, SUITS AND PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT EXCLUSIVELY IN A FEDERAL DISTRICT COURT LOCATED IN THE DISTRICT OF DELAWARE OR THE DELAWARE CHANCERY COURT IN NEW CASTLE COUNTY, DELAWARE (COLLECTIVELY THE “DESIGNATED COURTS”). EACH PARTY HEREBY CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE DESIGNATED COURTS. NO LEGAL ACTION, SUIT OR PROCEEDING WITH RESPECT TO THIS AGREEMENT MAY BE BROUGHT IN ANY OTHER FORUM. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL CLAIMS OF IMMUNITY FROM JURISDICTION AND ANY OBJECTION WHICH SUCH PARTY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING IN ANY DESIGNATED COURT, INCLUDING ANY RIGHT TO OBJECT ON THE BASIS THAT ANY DISPUTE, ACTION, SUIT OR PROCEEDING BROUGHT IN THE DESIGNATED COURTS HAS BEEN BROUGHT IN AN IMPROPER OR INCONVENIENT FORUM OR VENUE. EACH OF THE PARTIES ALSO AGREES THAT DELIVERY OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT TO A PARTY HEREOF IN COMPLIANCE WITH SECTION 12.7 OF THIS AGREEMENT SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION, SUIT OR PROCEEDING IN A DESIGNATED COURT WITH RESPECT TO ANY MATTERS TO WHICH THE PARTIES HAVE SUBMITTED TO JURISDICTION AS SET FORTH ABOVE.

12.20 Legal Representation.

(a) Each of the Parties hereto acknowledges and agrees, on its own behalf and on behalf of its directors, members, partners, officers, employees, and Affiliates that the Company is a client of Perkins Coie LLP.
Firm”). After the Closing, it is possible that Firm will represent the Equityholders and/or the Representative on behalf of the Equityholders in connection with the transactions contemplated herein or in connection with any claims for indemnification against the Equityholders. Buyer, the Surviving Corporation, and the Company hereby agree that the Firm (or any successor) may represent the Equityholders in the future in connection with issues that may arise under this Agreement and any claims that may be made pursuant to this Agreement, including a dispute that arises after the Closing between Buyer (and/or the Company) and any Equityholder, even though the interests of such Equityholder may be directly adverse to Buyer or the Company, or even though Firm may be handling ongoing matters for the Company. Each of the parties hereto consents thereto, and waives any conflict of interest arising therefrom, and each such party shall cause any Affiliate thereof to consent to waive any conflict of interest arising from such representation. Each of the parties hereto acknowledges that such consent and waiver is voluntary, that it has been carefully considered, and that the parties have consulted with counsel or have been advised they should do so in this connection.

(b) Notwithstanding anything to the contrary contained herein, the parties intend that all communications at or prior to the Closing between the Company or any Equityholder (the “Target Group”), on the one hand, and any of their attorneys, on the other hand, exclusively in connection with the negotiation and documentation of this Agreement and the agreements entered into in connection with the Merger, the transactions contemplated hereunder and thereunder (collectively, the “Protected Communication”), and will not be disclosed by Firm to Buyer or the Company (following Closing) in any action between Buyer or the Company (following the Closing), on one hand, and the Representative or the Equityholders, on the other hand; provided, however, that (a) the Equityholders may choose to waive the privilege in their sole discretion and (b) in the event of any dispute between Buyer, the Company (following the Closing) or any of their respective Affiliates, on the one hand, and a third party (other than a party to this Agreement), on the other hand, after the Closing, the Company and its affiliates may assert the attorney-client privilege to prevent disclosure of confidential communications by Firm or any Equityholder to such third party.

[Remainder of Page Intentionally Left Blank]
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

BUYER:

LIVONGO HEALTH, INC.

By:  /s/ Glen Tullman
Name:  Glen Tullman
Title:  Executive Chairman

MERGER SUB:

LIVONGO MERGER SUB, INC.

By:  /s/ Naomi Allen
Name:  Naomi Allen
Title:  President/Director

COMPANY:

MYSTRENGTH, INC.

By:  /s/ Scott Cousino
Name:  Scott Cousino
Title:  Chief Executive Officer

REPRESENTATIVE:

SHAREHOLDER REPRESENTATIVE SERVICES LLC,
solely in its capacity as the Representative

By:  /s/ Radha Subramanian
Name:  Radha Subramanian
Title:  Senior Director

[Signature Page to Agreement and Plan of Merger]
EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

LIVONGO HEALTH, INC.

RAISIN MERGER SUB, INC.

RETROFIT INC.

AND

THE STOCKHOLDER REPRESENTATIVE

Dated as of March 31, 2018
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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this “Agreement”) is made and entered into as of March 31, 2018 by and among Livongo Health, Inc., a Delaware corporation (“Parent”), Raisin Merger Sub, Inc., an Illinois corporation and a wholly-owned subsidiary of Parent (“Merger Sub”), Retrofit Inc., a Delaware corporation (the “Company”) and the Stockholder Representative listed as a signatory hereto (the “Stockholder Representative”). Purchaser, Merger Sub, the Company and the Stockholder Representative are each sometimes individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

A. Parent, Merger Sub and the Company intend to effect a merger (the “Merger”) of Merger Sub with and into the Company in accordance with this Agreement and the provisions of the General Corporation Law of the State of Delaware, as amended (the “DGCL”) and the Illinois Business Corporation Act (the “IBCA”).

B. The Board of Directors of the Company has unanimously (i) determined that the Merger is fair to, advisable and in the best interests of, the Company and its stockholders, (ii) approved this Agreement, the Merger and the transactions contemplated hereby and (iii) resolved to recommend to its stockholders that they adopt and approve this Agreement, the Merger and the transactions contemplated hereby.

C. The respective Boards of Directors of Parent and Merger Sub have approved this Agreement, the Merger and the transactions contemplated hereby.

NOW, THEREFORE, in consideration of the foregoing and the covenants, promises and representations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. When used in this Agreement, the following terms shall have the meanings assigned to them in this Section 1.1, or in the applicable Section of this Agreement to which reference is made in this Section 1.1.

“Accounting Firm” is defined in Section 2.7(c).

“Action” is defined in Section 3.18.

“Adjusted Closing Date Consideration” is defined in Section 2.7.

“Agreement” is defined in the Preamble.

“Authorization” means any authorization, approval, consent, registration, clearance, de novo, listing, exemption, certificate, license, permit or franchise of or from any Governmental Entity or pursuant to any Law.

“Balance Sheet Date” is defined in Section 3.7.

“Breakage Fee” is defined in Section 9.3(a).

“Business Day” means each calendar day except Saturdays, Sundays, and any other day on which banks are generally closed for business in Mountain View, California.
“Bylaws” means the Company’s Bylaws as currently in effect.

“Certificate” is defined in Section 2.10.

“Certificate of Incorporation” means the Company’s Third Amended and Restated Certificate of Incorporation, filed with the Secretary of State of the State of Delaware on April 12, 2016, as amended by the Certificate of Amendment filed with the Secretary of State of the State of Delaware on June 9, 2017.

“Certificate of Merger” is defined in Section 2.2(b).

“Claim Notice” is defined in Section 7.3(b).

“Closing” is defined in Section 2.2(a).

“Closing Amount” is defined in Section 2.7(b).

“Closing Date” is defined in Section 2.2(a).

“Closing Date Consideration” means $11,925,000 minus the Payoff Indebtedness, and subject to adjustment pursuant to Section 2.7.

“Closing Net Working Capital” means the current assets of the Company (excluding capitalized costs) minus the current liabilities (including, without limitation, all Transaction Expenses, deferred revenue, deferred salary, accrued payroll and sales tax liability but excluding Payoff Indebtedness) of the Company, in each case, calculated as of the close of business on the date immediately preceding the Closing Date in a manner consistent with GAAP and the Working Capital Principles.

“Closing Payment” is defined in Section 2.11(a).


“Company” is defined in the Preamble.

“Company Balance Sheet” is defined in Section 3.7.

“Company Capital Stock” means the capital stock of the Company.

“Company Disclosure Schedule” is defined in the preamble to ARTICLE III.

“Company Escrow Parties” means each Company Stockholder (other than holders of Dissenting Shares who do not effectively withdraw or lose (through failure to perfect or otherwise) their appraisal rights) that is entitled to receive Merger Consideration.

“Company Financial Statements” is defined in Section 3.7.

“Company Intellectual Property” means all Intellectual Property that is owned or held by or on behalf of the Company or that is being used, or is currently under development for use, in the business of the Company.

“Company Stock Option Plan” is defined in Section 3.3(b)(i).

“Company Stockholder” is defined in Section 2.4.

“Company Stockholder Requisite Consent” is defined in Section 3.4.
“Conflict” is defined in Section 3.5.

“Contract” means any contract, agreement, indenture, note, bond, mortgage, loan, instrument, lease, license, commitment or other binding arrangement, understanding, undertaking, commitment or obligation.

“Damages” is defined in Section 7.1(b).

“Debt Payoff Letters” means pay-off letters, releases and Lien discharges (or agreements therefor) with respect to the Payoff Indebtedness, duly executed by each creditor with respect thereto, each in form and substance reasonably satisfactory to Parent, in which the payee shall agree that upon payment of the amount specified in such payoff letter: (1) all outstanding obligations of the Company arising under or related to the applicable Payoff Indebtedness shall be repaid, discharged and extinguished in full; (2) all Liens in connection therewith shall be released on the Closing Date upon receipt of the requisite payoff amounts; (3) the payee shall take all customary actions to evidence and record such discharge and release as promptly as practicable; and (4) the payee shall return to the Company all instruments evidencing the applicable Payoff Indebtedness (including all notes) and all collateral securing the applicable Payoff Indebtedness.

“DGCL” is defined in the Recitals.

“Disclosure Schedule Update” is defined in Section 5.11.

“Dissenting Shares” is defined in Section 2.6(a).

“Earn-Out Consideration” is defined in Section 2.8.

“Earn-Out Period” is defined in Section 2.8(e).

“Effective Time” is defined in Section 2.2(b).

“Employee Plans” is defined in Section 3.22(a).

“Environmental Laws” shall mean all Laws relating to pollution or protection of the environment.

“Environmental Permits” shall mean any environmental approvals, permits, licenses, clearances and consents necessary for the conduct of the Company’s business as such activities and business are currently being conducted.

“ERISA Affiliate” is defined in Section 3.22(g).

“Escrow Agent” means JPMorgan Chase Bank, N.A.

“Escrow Agreement” is defined in Section 2.5(a).

“Escrow Amount” means the Working Capital Escrow Amount plus the Indemnity Escrow Amount.

“Escrow Termination Date” is defined in Section 2.5(b).

“FDA” is defined in Section 3.25(a).

“Fundamental Representations” means the representations and warranties set forth in Sections 3.1, 3.2, 3.3, 3.4, 3.19, 4.1, 4.2, and 4.4 of this Agreement.

-3-
“GAAP” means generally accepted accounting principles, consistently applied, in the United States of America.

“HIPAA” is defined in Section 3.25(e).

“IBCA” is defined in the Recitals.

“Indebtedness” means, with respect to the Company, without duplication, (a) all indebtedness and obligations for borrowed money or issued in substitution for or exchange of indebtedness for borrowed money, (b) any obligation evidenced by any note, bond, debenture, or other similar instrument or debt security, (c) any indebtedness guaranteed in any manner by a Person, (d) any outstanding letter of credit, sight draft, bankers’ acceptances, performance bond or similar surety obligation of the Company to the extent such letter of credit, sight draft, bankers’ acceptance, performance bond or similar surety obligation has been drawn upon or funded, (e) all indebtedness and obligations in respect of swap, collar, hedging (excluding any forward power trades) or derivative instruments, (f) all indebtedness and obligations in respect of any leases of real or personal property or combination thereof, which obligations are required to be classified and accounted for under GAAP as capital leases, (g) the deferred purchase price of property, goods or services, (h) all deal-related bonuses, closing or signing bonuses and/or severance or retention or similar or related payments or benefits payable under any Company arrangement or agreement in effect as of or prior to the Closing Date as a result of, or in connection with, the execution of this Agreement or the consummation of Merger, including any employer-side employment or additional Taxes payable with respect to any of the foregoing, and (i) all indebtedness in the nature of effective guarantees by the Company of the obligations of other Persons of a type described in clauses (a) through (h) to the extent of the obligation guaranteed, and all such obligations of other Persons secured by a Lien on any property of the Company to the extent of the obligation secured.

“Indemnified Person” is defined in Section 7.3(a).

“Indemnifying Person” is defined in Section 7.3(a).

“Indemnity Escrow Amount” means the cash amount of $2,838,750.

“Intellectual Property” means all tangible or intangible proprietary information and materials, including without limitation: (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice) and all improvements thereon, (ii) all trademarks, service marks, trade dress, logos, trade names, domain names, brands and corporate names, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, (iii) all confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production process and techniques, methods, schematics, technology, technical data, designs, drawings, flowcharts, block diagrams, specifications, customer and supplier lists, pricing and cost information and business and marketing plans and proposals), (iv) all software and firmware (including data, databases and related documentation), (v) all documents, records and files relating to design, end user documentation, manufacturing, quality control, sales, marketing or customer support for, and tangible embodiments of, all intellectual property described herein; and (vi) all Intellectual Property rights related to the foregoing.

“Intellectual Property Rights” means all forms of legal right and protections, in any country of the world, that may be obtained for tangible or intangible proprietary information and materials, including all rights arising under common and statutory law to (i) all patents and patent applications, together with all reissues, continuations, continuations-in-part, divisions, revisions, extensions and re-examinations thereof; (ii) all trademarks and other proprietary indicia, including all applications, registrations, domain name registrations, and renewals in connection therewith; (iii) all copyrights and all applications, registrations and renewals in connection therewith; (iv) all mask works and all applications, registrations and renewals in connection therewith; (v) trade secrets and equivalent rights in proprietary and/or confidential information; (vi) all licenses, agreements and other rights in any third party product or any third party intellectual property.
“Knowledge” means (i) with respect to the Company, the actual knowledge, after due inquiry, of those individuals identified on Schedule 1.1(a), and (ii) with respect to Parent, the actual knowledge, after due inquiry, of those individuals identified on Schedule 1.1(b).

“Law” means any international, national, federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation or other similar requirement enacted, adopted, promulgated or applied by a Governmental Entity.

“Leased Real Property” is defined in Section 3.12(a)(i).

“Leases” is defined in Section 3.12(a)(ii).

“Liability” means any debt, loss, damage, claim, fine, penalty, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured, determined or determinable, liquidated or unliquidated, or due or to become due, and whether in Contract, tort, strict liability or otherwise).

“Lien” means, with respect to any property or asset, any mortgage, deed of trust, lien (statutory or other), encumbrance, pledge, charge, security interest, constructive trust, warrant, claim, equitable interest, option, right to income or profits, earn-out, restrictions on transfer, conditional sale or other title retention device or arrangement (including a capital lease), whether contingent, fixed or otherwise.

“Material Adverse Effect” means any state of facts, development, event, circumstance, condition, occurrence or effect that, individually or taken collectively with all other facts, developments, events, circumstances, conditions, occurrences or effects, has, or would reasonably be expected to have, a material adverse effect on (a) the business, assets, liabilities, financial condition or results of operations of the Company, or (b) the ability of the Company to perform its obligations hereunder and consummate the transactions contemplated hereby, other than in the case of clause (a) above, any change, effect, fact, event or circumstance arising out of or resulting from (i) changes in conditions in the U.S. or global economy or capital or financial markets generally, including changes in interest or exchange rates (so long as the foregoing do not disproportionately affect the Company), (ii) changes in general legal, tax, regulatory, political or business conditions that, in each case, generally affect the geographic regions or industries in which the Company conducts its business (so long as the foregoing do not disproportionately affect the Company), (iii) changes in GAAP, (iv) acts of war, armed hostilities, sabotage or terrorism, or any escalation or worsening of any such acts of war, armed hostilities, sabotage or terrorism threatened or underway as of the date of this Agreement (so long as the foregoing do not disproportionately affect the Company), (v) earthquakes, hurricanes, floods, or other natural disasters (so long as the foregoing do not disproportionately affect the Company), (vi) the announcement or pendency of this Agreement and the other transactions contemplated by this Agreement or the consummation of the transactions contemplated by this Agreement, including the impact thereof on relationships, contractual or otherwise, with customers or employees, or (vii) any action taken by the Company at the written request of Parent.

“Material Contract” is defined in Section 3.14(a).

“Merger Consideration” is defined in Section 2.3.

“Merger Sub” is defined in the Preamble.

“Option” means each issued and outstanding option to purchase shares of Company Capital Stock.

“Parent” is defined in the Preamble.
“Parent Indemnified Persons” means Parent and its Affiliates (including the Company), and each of their respective directors, officers, employees, stockholders, agents, attorneys, representatives, successors and assigns.

“Party” and “Parties” are defined in the Preamble.

“Paying Agent” is defined in Section 2.11(b).

“Payoff Indebtedness” means the Promissory Notes and any other Indebtedness as identified on Section 3.8(b) of the Company Disclosure Schedule.

“Person” means an individual, a corporation, a partnership, a limited liability company, a trust, an unincorporated association, a Governmental Entity or any agency, instrumentality or political subdivision of a Governmental Entity, or any other entity or body.

“Post-Closing Plans” means employee benefit plans of Parent and its Affiliates (including the Company) providing benefits to Company Employees after the Closing.

“Promissory Notes” means the Secured Promissory Notes made as of August 25, 2017 and March 12, 2018 and issued by the Company to Regence Blue Shield.

“Pro Rata Share” is defined in Section 2.5(b).

“Publicly Available Software” means each of (i) any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software, or similar licensing and distribution models; and (ii) any software that requires as a condition of use, modification, and/or distribution of such software that such software or other software incorporated into, derived from, or distributed with such software (a) be disclosed or distributed in source code form; (b) be licensed for the purpose of making derivative works; or (c) be redistributable at no or minimal charge. Publicly Available Software includes, without limitation, software licensed or distributed under any of the following licenses or distribution models similar to any of the following: (a) GNU General Public License (GPL) or Lesser/Library GPL (LGPL), (b) the Apache Server License, (c) the MIT License or (d) the BSD License.

“Real Property” is defined in Section 3.12(a)(i).

“Related Agreement” is defined in Section 3.4.

“Series E Closing” is defined in Section 6.2(j).

“Shares” is defined in Section 2.4(a).

“Shortfall Amount” is defined in Section 2.7(d).

“Spreadsheet” is defined in Section 3.3(d).

“Stockholder Representative” is defined in the Preamble.

“Subsidiary” means, with respect to any party, any Person, of which (a) such party or any Subsidiary of such party is a general partner (excluding partnerships, the general partnership interests of which held by such party or any Subsidiary of such party do not have a majority of the voting interest in such partnership), (b) at least a majority of the securities or other equity interests in such Person is directly or indirectly owned or controlled by such party and/or by any one or more of its Subsidiaries, (c) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others
performing similar functions with respect to such Person is directly or indirectly owned or controlled by such party and/or by any one or more of its Subsidiaries or (d) the accounts of which would be consolidated with and into those of the applicable Person in such Person’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date.

“Surplus Amount” is defined in 2.7(d)

“Surviving Company” is defined in Section 2.1(a).

“Tax” and “Taxes” means (i) all federal, national, state and local income, profits, franchise, sales, use, ad valorem, property, severance, production, excise, stamp, documentary, real property transfer or gain, gross receipts, goods and services, registration, capital, transfer, value added, payroll, employment, withholding, environmental, alternative minimum, or add-on minimum taxes or other assessments, duties, fees or charges imposed by any Governmental Entity, including any interest, penalties or additional amounts which may be imposed with respect thereto or otherwise in respect of any Tax Return and (ii) any liability for the payment of any amounts of the type described in clause (i) as a result of any written obligation to indemnify any other Person, being a transferee or successor in interest to any party, or as a member of an affiliated, consolidated, combined or unitary group for any period.

“Tax Authority” means any Governmental Entity competent to impose any Tax in any jurisdiction.

“Tax Return” means any return, report or other information required to be supplied to a Tax Authority in connection with Taxes.

“Third Party Claim” is defined in Section 7.3(b).

“Transaction Expenses” means all fees and expenses incurred by the Company but not yet paid in connection with this Agreement and the transactions contemplated by this Agreement.

“Warrant” means each issued and outstanding warrant to purchase shares of Company Capital Stock.

“Working Capital Escrow Amount” means $400,000.

“Working Capital Principles” means the accounting practices and the principles, procedures and definitions set forth in and implemented consistent with Schedule 1.1(c).

1.2 Interpretation.

(a) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term and vice versa, and words denoting either gender shall include both genders as the context requires. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(b) The terms “hereof”, “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement.

(c) When a reference is made in this Agreement to an Article, Section, paragraph, Exhibit or Schedule, such reference is to an Article, Section, paragraph, Exhibit or Schedule to this Agreement unless otherwise specified.

(d) The word “include”, “includes”, and “including” when used in this Agreement shall be deemed to be followed by the words “without limitation”, unless otherwise specified.

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(e) A reference to any Party to this Agreement or any other agreement or document shall include such Party’s successors and permitted assigns.

(f) The Parties have participated jointly in the negotiation and drafting of this Agreement. Any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party by virtue of the authorship of this Agreement shall not apply to the construction and interpretation hereof.

(g) All references to $ are to United States dollars.

(h) Unless the context otherwise requires, a reference to any Law includes any amendment, modification or successor thereto

ARTICLE II
THE MERGER

2.1 The Merger.

(a) Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Merger Sub shall be merged with and into the Company, whereupon the separate corporate existence of Merger Sub shall cease and the Company shall be the surviving corporation (the “Surviving Company”). The Merger shall have the effects specified in the DGCL.

(b) The certificate of incorporation attached as an exhibit to the Certificate of Merger upon its filing with the Secretary of State of the State of Delaware and the bylaws of the Merger Sub in effect immediately prior to the Effective Time shall be the certificate of incorporation and bylaws, respectively, of the Surviving Company after the Effective Time unless and until further amended as provided by law.

(c) The directors and officers of Merger Sub immediately prior to the Effective Time shall be the directors and officers of the Surviving Company after the Effective Time. Such directors and officers shall hold their positions until the election and qualification of their respective successors or until their tenures are otherwise terminated in accordance with the By-laws of Surviving Company.

2.2 Closing; Effective Time.

(a) The closing (the “Closing”) of the transactions contemplated hereunder shall take place remotely via the exchange of documents and signatures, at such time and on a date to be specified by the parties, which shall be no later than the fifth Business Day following the date on which the last of the conditions set forth in Article VI hereof shall be satisfied or waived in accordance with this Agreement (the “Closing Date”).

(b) Upon the Closing, the Company and Merger Sub shall file with the Secretary of State of the State of Delaware a certificate of merger, executed in accordance with the relevant provisions of the DGCL (the “Certificate of Merger”), and articles of merger, executed in accordance with the relevant provisions of the IBCA and shall make all other filings or recordings required under the DGCL and the IBCA in connection with the Merger, in such form as is required by, and executed in accordance with, the relevant provisions of the DGCL and the IBCA. The Merger shall become effective at such time as the Certificate of Merger is so filed or at such later time as may be agreed by Parent and the Company and specified in the Certificate of Merger (the “Effective Time”).

2.3 Merger Consideration. The aggregate amount of consideration to be paid by Parent with respect to the outstanding shares of Company Capital Stock shall equal the Closing Date Consideration and the Earn-Out Consideration (the “Merger Consideration”).

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2.4 Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub or the Company or any stockholder of the Company (each such stockholder, a "Company Stockholder"):

(a) Each share of Company Capital Stock (the "Shares") issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares) will be canceled and extinguished and be converted into the right to receive, upon surrender of the certificate representing such Shares in the manner provided in Section 2.11 hereof, the per share Merger Consideration, if any, applicable to such share of Company Capital Stock determined in accordance with Article FOURTH, Subsection B, Section 2 of the Company’s Certificate of Incorporation as in effect immediately prior to the Effective Time treating the Merger as a liquidation, dissolution or winding-up of the Company within the meaning of such Article FOURTH, Subsection B, Section 2, payable upon the terms and subject to the conditions set forth in this Agreement, including, without limitation, this Section 2.3 and the escrow provisions set forth in Section 2.5.

(b) All shares of any class of Company Capital Stock held or owned by the Company as treasury shares shall be cancelled and no consideration shall be payable with respect thereto.

(c) Each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time of the Merger shall be converted into one share of the common stock of the Surviving Company.

(d) After the Effective Time, there shall be no transfers of any shares of Company Common Stock on the stock transfer books of the Company or the Surviving Company. If, after the Effective Time, certificates formerly representing shares of Company Capital Stock are presented to the Surviving Company, they shall be forwarded to the Paying Agent and shall be cancelled and exchanged in accordance with this Section 2.3, subject, in the case of Dissenting Shares, to Section 2.6.

2.5 Escrow Amount.

(a) A portion of the Merger Consideration otherwise payable to the Company Stockholders in cash equal to the Escrow Amount will be deposited by Parent on the Closing Date with the Escrow Agent in an escrow fund in accordance with the Escrow Agreement in the form mutually agreed by the Parties (the "Escrow Agreement"). The Working Capital Escrow Amount shall be used to satisfy any adjustment to the Merger Consideration pursuant to Section 2.7(d), and the Indemnity Escrow Amount shall be used to satisfy any Shortfall Amount in excess of the Working Capital Escrow Amount and any indemnification obligations of the Company Escrow Parties under Section 7.1.

(b) Any portion of the Working Capital Escrow Amount that has not been paid to Parent to satisfy the Company Escrow Parties’ obligations pursuant to Section 2.7(d) of this Agreement shall be deposited on the second Business Day following the final determination of the Closing Net Working Capital under Section 2.7 (the "Working Capital Escrow Termination Date"). Any portion of the Indemnity Escrow Amount that has not been paid to Parent to satisfy the Company Escrow Parties’ obligations pursuant to Section 2.7(d) and Section 7.1 of this Agreement shall be distributed to the Company Escrow Parties on the second Business Day following the first (1st) anniversary of the Closing Date (the "Escrow Termination Date"); provided, however, any portion of the Indemnity Escrow Amount that is subject to any pending claim as of the Escrow Termination Date shall be retained by Parent in escrow until the resolution of such pending claim. The Escrow Amount shall be withheld from the Merger Consideration that would otherwise be payable to the Company Escrow Parties on a pro rata basis, as determined by reference to the portion of the Merger Consideration each Company Escrow Party is entitled to receive in the Merger as compared to all other Company Escrow Parties (each Company Escrow Party’s “Pro Rata Share”).

2.6 Dissenting Shares.

(a) Notwithstanding any provision of this Agreement to the contrary, any holder of shares of Company Capital Stock who has demanded and perfected appraisal or dissenters’ rights for such shares in accordance with
the DGCL and who, as of the Effective Time, has not effectively withdrawn or lost such appraisal or dissenters’ rights (the “Dissenting Shares”), shall not be converted into or represent the right to receive the Merger Consideration pursuant to Section 2.4, but the holder thereof shall only be entitled to such rights as are granted by the DGCL.

(b) Notwithstanding the provisions of subsection (a), if any Company Stockholder who holds Dissenting Shares as of the Effective Time shall effectively withdraw or lose (through passage of time, failure to demand or perfect, or otherwise) the right to demand and perfect appraisal or dissenters’ rights under the DGCL, then, as of the later of the Effective Time and the occurrence of such event, such holder’s shares that were Dissenting Shares shall automatically be converted into and represent only the right to receive the Merger Consideration pursuant to and subject to Section 2.4, without interest thereon upon surrender of the certificate representing such shares.

(c) The Company shall give Parent (i) prompt notice of any written demands for appraisal of any shares of Company Capital Stock, demands for purchase by the Company of any shares of Company Capital Stock pursuant to the exercise of dissenters’ rights, withdrawals of such demands, and any other instruments or notices served pursuant to the DGCL on the Company and (ii) the opportunity to participate in all negotiations and proceedings with respect to demands for appraisal under the DGCL. The Company shall not, except as required by applicable Law or with the prior written consent of Parent, (A) make any payment with respect to any demands for appraisal of Company Capital Stock or demands for purchase of Company Capital Stock or (B) offer to settle or settle any such demands.

2.7 Working Capital; Working Capital Adjustment. The Closing Date Consideration, adjusted as set forth in this Section 2.7(a) shall be the “Adjusted Closing Date Consideration.”

(a) The Closing Date Consideration shall be adjusted as follows. If the Closing Net Working Capital is less than negative $(500,000) the cash portion of the Closing Date Consideration shall be decreased dollar for dollar by an amount equal to such deficiency. If the Closing Net Working Capital is more than negative $(500,000) the cash portion of the Closing Date Consideration shall be increased dollar for dollar by an amount equal to such surplus.

(b) Not later than two (2) Business Days prior to the Closing Date, the Company shall prepare and deliver to Parent a preliminary statement setting forth the Company’s good faith estimates accompanied by reasonably detailed work papers of the Closing Net Working Capital and showing the calculation thereof and the Adjusted Closing Date Consideration, after giving effect to the estimated Closing Net Working Capital adjustment. The “Closing Amount” shall equal the estimate of the Adjusted Closing Date Consideration delivered in accordance with this Section 2.7(b).

(c) On or before the 90th day following the Closing Date, Parent shall prepare and deliver to the Stockholder Representative a statement setting forth the Closing Net Working Capital and showing the calculation thereof and the Adjusted Closing Date Consideration, after giving effect to the Closing Net Working Capital adjustment. As soon as reasonably practicable but not later than the 45th day following the Stockholder Representative’s receipt of Parent’s statement hereunder, the Stockholder Representative shall deliver to Parent a written report containing any changes that the Stockholder Representative proposes be made to such statement together with reasonable supporting detail therefor. In connection with the Stockholder Representative’s review of Parent’s statement, Parent shall provide the Stockholder Representative with any information reasonably requested by it. The Parties shall use good faith efforts to attempt to agree on the final statement of the Adjusted Closing Date Consideration no later than thirty (30) days after Parent’s receipt of the Stockholder Representative’s report. In the event that the Parties cannot reach agreement within such period of time, either Party may refer the remaining matters in dispute for review and final determination to KPMG LLP (or if such firm shall decline or is unable to act, to another internationally recognized independent accounting firm mutually acceptable to Purchaser and the Stockholder Representative, the “Accounting Firm”). Once appointed, the
Accounting Firm shall have no *ex parte* communications with any of the Parties concerning the determination required hereunder. All communications between any Party, or its Affiliates, and the Accounting Firm shall be conducted in writing, with copies sent simultaneously to the other Parties in the same manner, or at a meeting to which the representatives of the Parties have been invited with at least five (5) days prior written notice. Within ten (10) days of appointment of the Accounting Firm, Parent shall present the Accounting Firm with its statement of proposed changes, and the Stockholder Representative shall present the Accounting Firm with its response within ten (10) days after receipt of Parent’s statement, in each case together with all other supporting information that such Party desires, with a copy to the other Party. The Accounting Firm’s determination shall be made within thirty (30) days after the deadline for the Stockholder Representative’s submissions and shall be final and binding on the Parties, without right of appeal. The Accounting Firm shall limit its review to whether the Closing Net Working Capital has been calculated in a manner consistent with GAAP and the Working Capital Principles. The Accounting Firm shall act as an expert for the limited purpose of determining the specific disputed matters submitted by the Parties in accordance with this Section, shall not act as an arbitrator, and may not award damages or penalties to either Party with respect to any matter. Each Party shall bear its own legal fees and other costs of presenting its case. The Stockholder Representative shall bear one-half and Purchaser shall bear one-half of the costs and expenses of the Accounting Firm. The Parties agree to execute, if requested by the Accounting Firm, a reasonable engagement letter, including customary indemnities in favor of the Accounting Firm.

(d) Promptly but in any event within ten (10) days after the earlier of (i) the expiration of the Stockholder Representative’s forty-five (45)-day review period without delivery of any written report or (ii) the date on which the Parties or the Accounting Firm, as applicable, finally determines the disputed matters, if the Adjusted Closing Date Consideration is less than the Closing Amount (such difference, the “*Shortfall Amount*”), Parent shall be entitled to be paid the Shortfall Amount from the Escrow Amount or if the Adjusted Closing Date Consideration is more than the Closing Amount (such difference, the “*Surplus Amount*”), the Company Stockholders shall be entitled to be paid the Surplus Amount with a disbursement made by the Paying Agent under Section 2.10.

2.8 Earn-Out Consideration. The Company Stockholders shall be entitled to receive additional consideration (the “*Earn-Out Consideration*”) of up to an aggregate of $[***] in accordance with the provisions of this Section 2.8. At the Closing, Parent shall deposit $[***] with the Escrow Agent, which amount shall be disbursed in accordance with this Section 2.8.

(a) Certain terms used in this Section 2.8 are defined below.

(i) “*Earn-Out Payment*” means, as applicable the 2018 Payment, the 2019 Payment and the 2020 Payment.

(ii) “*Gross Margin*” means the percentage resulting from (i) the difference between (A) revenue recognized with respect to a contract minus (B) the cost of sales attributable to such contract divided by (ii) such revenue. Gross Margin shall be determined in accordance with GAAP.

(iii) “*Partial Payment*” means, as applicable, the 2018 Partial Payment, the 2019 Partial Payment and the 2020 Partial Payment.

(iv) “*Qualifying Contract*” means a contract to provide the Livongo for Diabetes Program or a Qualifying Livongo Program entered into by Parent and a Retrofit Contact after the Closing Date, provided that
the Gross Margin attributable to such contract is not less than 68%, or has such other terms as are determined by Parent in consultation with the Stockholder Representative.

(v) “Qualifying Enrollee” for any Earn-Out Period (defined below), means an individual who enrolls in a Qualifying Livongo Program as a covered benefit pursuant to a Qualifying Contract during such Earn-Out Period (and who was not previously counted as a Qualifying PwD or a Qualifying Enrollee in any prior Earn-Out Period).

(vi) “Qualifying Livongo Program” means any program offered by Parent other than the Livongo for Diabetes Program.

(vii) “Qualifying Member” means a Qualifying Enrollee or Qualifying PwD, as applicable; provided, that for purposes of determining whether the Target has been achieved in any Earn-Out Period, each Qualifying Enrollee shall count as three quarters (.75) of a Qualifying Member and each Qualifying PwD shall count as one Qualifying Member.

(viii) “Qualifying PwD” for any Earn-Out Period, means an individual with a diagnosis of diabetes who is eligible to enroll in the Livongo for Diabetes Program as a covered benefit pursuant to a Qualifying Contract during such Earn-Out Period (and who was not previously counted as a Qualifying PwD or a Qualifying Enrollee in any prior Earn-Out Period).

(ix) “Retrofit Contacts” means those customers, channel partners and other Persons set forth on Schedule 2.8(a)(vii) with which the Company has established a business relationship and who are not customers or partners of Parent as of the Closing Date, as such Schedule 2.8(a)(vii) may be amended from time to time by mutual agreement of Parent and the Stockholder Representative.

(x) “Target” means, as applicable, the 2018 Target, the 2019 Target and the 2020 Target.

(b) If in the period from the Closing Date to December 31, 2018, there are 25,000 Qualifying Members (the “2018 Target”), then the Escrow Agent will deliver $[***] (the “2018 Payment”) to the Paying Agent for distribution to the Company Stockholders. If the 2018 Target is not achieved, then the Escrow Agent will deliver to (i) the Paying Agent for distribution to the Company Stockholders an amount equal to the 2018 Payment multiplied by a fraction, the numerator of which is the number of Qualifying Members in the period from the Closing Date to December 31, 2018 and the denominator of which is the 2018 Target (the “2018 Partial Payment”) and (ii) Parent an amount equal to the 2018 Payment minus the 2018 Partial Payment.

(c) If in the year ending December 31, 2019, there are 30,000 Qualifying Members (the “2019 Target”), then the Escrow Agent will deliver $[***] (the “2019 Payment”) to the Paying Agent for distribution to the Company Stockholders. If the 2019 Target is not achieved, then the Escrow Agent will deliver to (i) the Paying Agent for distribution to the Company Stockholders an amount equal to the 2019 Payment multiplied by a fraction, the numerator of which is the number of Qualifying Members in the year ending December 31, 2019 and the denominator of which is the 2019 Target (the “2019 Partial Payment”) and (ii) Parent an amount equal to the 2019 Payment minus the 2019 Partial Payment.

(d) If in the year ending December 31, 2020, there are 45,000 Qualifying Members (the “2020 Target”), then the Escrow Agent will deliver $[***] (the “2020 Payment”) to the Paying Agent for distribution to the Company Stockholders. If the 2020 Target is not achieved, then the Escrow Agent will deliver to (i)
Paying Agent for distribution to the Company Stockholders an amount equal to the 2020 Payment multiplied by a fraction, the numerator of which is the number of Qualifying Members in the year ending December 31, 2020 and the denominator of which is the 2020 Target (the “2020 Partial Payment”) and (ii) Parent an amount equal to the 2020 Payment minus the 2020 Partial Payment.

\[(\text{Paying Agent}) = \frac{\text{Qualifying Members in 2020}}{\text{2020 Target}} \times \text{2020 Payment} \]

\[(\text{Parent}) = \text{2020 Payment} - \frac{\text{Qualifying Members in 2020}}{\text{2020 Target}} \times \text{2020 Payment} \]

\[(\text{Paying Agent}) + (\text{Parent}) = \text{2020 Payment} \]

(c) Not later than sixty (60) calendar days following the end of the period from the Closing Date through December 31, 2018 and each of the years ending December 31, 2019 and 2020 (each such period, a “Earn-Out Period”), Parent shall prepare and deliver to the Stockholder Representative a draft report setting forth a list of Qualifying Contracts and the number of Qualifying Members during such Earn-Out Period, Parent’s determination as to whether the applicable Target for such Earn-Out Period has been achieved, and if the Target has not been achieved, Parent’s calculation of the applicable Partial Payment (the “Draft Report”). The Stockholder Representative shall have 30 days to review the Draft Report, and will be afforded reasonable access to all books and records utilized to create the Draft Report during regular business hours upon reasonable advance notice. In the event the Stockholder Representative accepts the Draft Report or fails to object to the Draft Report by written notice to Parent within such 30-day period, the procedure set forth in Section 2.8(f) shall be followed within 10 calendar days following the conclusion of such 30-day period.

In the event the Stockholder Representative provides written notice to Parent within such 30-day period that it contests any of the findings in the Draft Report, Parent and the Stockholder Representative shall use the dispute resolution provision described in Section 2.7(c) to resolve any outstanding disputes. Once resolved, the procedure set forth in Section 2.8(f) shall be followed within 10 calendar days.

(f) If the applicable Target for the Earn-Out Period is achieved, then Parent and the Stockholder Representative shall deliver joint written instructions to the Escrow Agent to deliver the applicable Earn-Out Payment to the Paying Agent for distribution to the Company Stockholders. If the applicable Target for the Earn-Out Period is not achieved, then Parent and the Stockholder Representative shall deliver joint written instructions to the Escrow Agent to deliver (i) the applicable Partial Payment to the Paying Agent for distribution to the Company Stockholders and (ii) the remaining portion of the applicable Earn-Out Payment to Parent.

(g) Additional Consideration. In addition to the Earn-Out Consideration described above, if the 2018 Target is achieved, the Company Stockholders shall be entitled to receive additional consideration (the “Additional Consideration”) of up to an aggregate of $[***] in accordance with the provisions of this Section 2.8(g). If in the period from the Closing Date to July 31, 2019 (“Additional Consideration Period”), Parent recognizes revenue from Qualifying Enrollees, excluding the Qualifying Enrollees which attributed to reaching the 2018 Target (and provided that such Qualifying Enrollees shall not be counted towards the 2019 Target), and such revenue has a Gross Margin of not less than 68%, or has such other terms as are determined by Parent in consultation with the Stockholder Representative (the “Other Revenue”), then the Company Stockholders shall be entitled to receive additional consideration as follows: Upon the Parent recognizing Other Revenue of $[***], Company Stockholders will receive $[***] of Additional Consideration. Upon the Parent recognizing an additional $[***] of Other Revenue (total of $[***] of Other Revenue during Additional Consideration Period), Company Stockholders will receive an additional $[***] of Additional Consideration. Upon the Parent recognizing an additional $[***] of Other Revenue (total of $[***] of Other Revenue during Additional Consideration Period), Company Stockholders will receive an additional $[***] of Additional Consideration. Each Additional Consideration payment is a one-time payment and the Company Stockholders are not entitled to receive any portion of such Additional Consideration payment until each of the aforementioned Other Revenue thresholds have been fully met.

(h) Conduct of Parent. Parent shall utilize its customary business practices in connection with calculating the Earn-Out Consideration, and shall make determinations regarding what constitutes a Qualifying
Contract, Qualifying Enrollee, Qualifying Member, and Qualifying PwD utilizing its general accounting and business principles, consistently applied. Any deviation from Parent’s customary accounting and business principles pursuant to this Section 2.8 shall be construed in favor of the Company Stockholders unless the Stockholder Representative specifically agrees in writing to a different treatment in a particular circumstance.

2.9 Stock Options and Warrants.

(a) At the Closing, each Option that is then outstanding, whether or not vested or exercisable, shall automatically be cancelled and retired without payment of any consideration therefor. The Company shall take all action that may be necessary to effectuate the provisions of the first sentence of this Section 2.9(a).

(b) At the Effective Time, each Warrant, whether vested or unvested, shall no longer be of any further force or effect and shall not be exchangeable for any securities of Parent, the Surviving Company or any Subsidiary of Parent or the Surviving Company. The Company shall take all action that may be necessary to effectuate the provisions of this Section 2.9(b).

2.10 Closing of the Company’s Transfer Books. At the Effective Time, holders of certificates representing shares of the Company’s capital stock that were outstanding immediately prior to the Effective Time shall cease to have any rights as stockholders of the Company, and the stock transfer books of the Company shall be closed with respect to all shares of such capital stock outstanding immediately prior to the Effective Time. No further transfer of any such shares of the Company’s capital stock shall be made on such stock transfer books after the Effective Time. After the Effective Time, each valid certificate previously representing any of such shares of the Company’s capital stock (a “Certificate”) presented to the Surviving Company or Parent, shall be canceled and shall be exchanged as provided in Section 2.4.

2.11 Exchange of Certificates; Payment of Merger Consideration.

(a) At the Effective Time, Purchaser shall deliver, by wire transfer of immediately available funds, (i) to the Paying Agent an amount in cash equal to the Closing Amount minus the Escrow Amount (the “Closing Payment”) and (ii) to the Escrow Agent, the Escrow Amount.

(b) Parent or its designee shall act as Paying Agent hereunder (the “Paying Agent”). Promptly after the Effective Time, the Paying Agent shall mail, to former record holders of Shares who are entitled to receive Merger Consideration and have not previously submitted letters of transmittal together with Certificates, instructions for surrendering their Certificates in exchange for the Merger Consideration.

(c) On the Closing Date and thereafter, upon receipt of Certificates for cancellation, together with a properly completed letter of transmittal (which shall specify that delivery shall be effected, and risk of loss of, and title to, the Certificates shall pass, only upon delivery of the Certificates to the Paying Agent) and other requested documents and in accordance with the instructions thereon, the holder of such Certificates shall be entitled to receive in exchange therefor that portion of the Closing Payment into which the Shares theretofore represented by the Certificates so surrendered shall have been converted pursuant to Section 2.4.

(d) If any Certificates shall have been lost, stolen or destroyed, the Paying Agent shall deliver in exchange for such lost, stolen or destroyed certificates, upon the making of an affidavit of that fact by the holder thereof in a form reasonably acceptable to the Paying Agent, the applicable portion of the Merger Consideration.

(e) Parent, the Surviving Company, or the Paying Agent will be entitled to deduct and withhold from the Merger Consideration and any other payments contemplated by this Agreement such amounts as are required to be deducted and withheld with respect to the making of such payment under the Code, or any provision of state, local or foreign Tax law. To the extent that amounts are so withheld, such amounts shall be treated for all purposes of this Agreement as having been paid to the Company Stockholder in respect of whom such deduction
and withholding were made. The Company Stockholders will provide Parent, the Company or the Paying Agent (to the extent not previously provided) any Forms W-4, W-8, W-9 or other certificates or forms Parent, the Company or the Paying Agent may reasonably request prior to or after Closing, in order to allow Parent, the Company or the Paying Agent to meet its withholding obligations under any applicable Tax law.

2.12 Books and Records. On or before the Closing Date, the Company shall deliver to Parent, or its representatives, where located, all organizational documents, minute books, stock record books and corporate seals of Company, and the original copies of all books of account, leases, other agreements, securities, customer lists, files and other documents, instruments and papers of any kind or nature, both in paper and electronic form where applicable, belonging to or relating to Company or its business.

2.13 Further Action. If, at any time after the Effective Time, any further action is determined by Parent to be necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Company or Parent with full right, title and possession of and to all rights and property of Merger Sub and the Company, the officers and directors of the Surviving Company and Parent shall be fully authorized (in the name of Merger Sub or in the name of the Company) to take such action.

2.14 Payment Obligations. After making all payments contemplated by this Agreement, none of Parent, Merger Sub nor the Surviving Company shall have any liability or obligation with regard to the apportionment, allocation or distribution among the Company Stockholders, or receipt by the Company Stockholders of, the Merger Consideration, or any other payments required to be made to or on behalf of the Company Stockholders pursuant to this Agreement.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Parent and Merger Sub that the statements contained in this Article III are true and correct, except, as set forth in the disclosure schedule delivered by the Company to the Parent on the date hereof (the “Company Disclosure Schedule”). The Company Disclosure Schedule shall be arranged in paragraphs corresponding to the numbered and lettered paragraphs in this Article III.

3.1 Organization of the Company. The Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite corporate or similar power and authority to own, lease and operate its assets and carry on its business as now conducted. The Company is qualified or authorized to transact business as a foreign corporation or other organization in all jurisdictions in which failure to be so qualified has had or could be reasonably expected to have a Material Adverse Effect on the Company. The Company has previously provided or made available to Parent true and complete copies of the Certificate of Incorporation and Bylaws of the Company as presently in effect, and the Company is not in default in the performance, observation or fulfillment of such documents.

3.2 Subsidiaries. The Company has no Subsidiaries. The Company does not directly or indirectly own any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for, any equity or similar interest in, any Person.

3.3 Capitalization.

(a) The authorized capital stock of the Company consists of 11,250,000 shares of Company Common Stock, par value $0.0001 per share, of which 1,853,122 shares are issued and outstanding and 12,084,010 shares of Preferred Stock, par value $0.0001 per share (the “Company Preferred Stock”), of which 8,104,227 shares are issued and outstanding. Of the authorized Company Preferred Stock, 5,986,883 shares have been designated Series AA Preferred Stock, of which 4,365,500 shares are issued and outstanding; and 6,097,127 shares have
been designated Series AA-1 Preferred Stock, of which 3,738,727 shares are issued and outstanding. No other shares of Company Common Stock or Company Preferred Stock are issued and outstanding. All shares of Company Capital Stock are held of record by the Persons, with the addresses and in the amounts set forth on Section 3.3(a) of the Company Disclosure Schedule. All outstanding shares of capital stock of the Company (i) are duly authorized, validly issued, fully paid and non-assessable and not subject to preemptive rights created by statute, the Certificate of Incorporation or Bylaws of the Company or any agreement to which the Company is a party or by which it is bound and (ii) have been offered, sold and delivered by the Company in compliance with applicable federal and state securities laws. All preferential rights of the Company Preferred Stock in connection with the sale of substantially all of the Company assets or a merger involving the Company are set forth in the Certificate of Incorporation. No shares of Company Capital Stock are held in the Company’s treasury. There are no declared or unpaid dividends with respect to any shares of Company Capital Stock.

(b) (i) Except for the Company’s 2012 Stock Incentive Plan, as amended (the “Company Stock Option Plan”), the Company has never adopted, sponsored or maintained any stock option plan or any other plan providing equity compensation to any Person. The Company Stock Option Plan has been duly authorized, approved and adopted by the Company’s Board of Directors and its stockholders and is in full force and effect. The Company has reserved options for 1,422,143 shares of Company Common Stock for issuance pursuant to the Company Stock Option Plan, of which options for 683,788 shares have been issued and are outstanding and options for 738,355 shares are available for grant, as of the date hereof, pursuant to the Company Option Plan. Section 3.3(b)(i) of the Company Disclosure Schedule includes a true and complete list of all Options and restricted stock awards outstanding as of the date of this Agreement, including the names of the Persons to whom such Options and restricted stock awards have been granted, the number of vested shares subject to each Option or restricted stock award, as applicable and the per share exercise price for each Option. At the Closing, each Option to purchase shares of capital stock of the Company that is then outstanding, shall be either exercised (if vested) or cancelled (if not exercised or unvested).

(ii) The Company has issued Warrants for the purchase of an aggregate of 51,301 shares of Company Common Stock, no shares of Series AA Preferred Stock and no shares of Series AA-1 Preferred Stock. All Warrants have been offered, issued and delivered by the Company in compliance in all material respects with all applicable Laws. Section 3.3(b)(ii) of the Company Disclosure Schedule sets forth for each outstanding Warrant, the name of the holder of such Warrant, the domicile address of such holder, an indication of whether such holder is a current Employee of the Company, the date of grant or issuance of such Warrant, the number of shares of Company Capital Stock (and the class and series thereof) subject to such Warrant, the exercise price of such Warrant, the vesting schedule for such Warrant, including the extent vested as of the date of this Agreement and whether and to what extent the exercise rights of such Warrant will be accelerated and become exercisable as a result of the transactions contemplated by this Agreement. As of the Effective Time, the Warrants shall no longer be of any force or effect and shall not be exchangeable for any securities of Parent, the Surviving Company or any Subsidiary of Parent or the Surviving Company.

(iii) True and complete copies of all instruments referred to in this Section 3.3(b) have been provided to Parent.

(c) The Company’s authorized capital stock consists solely of the Company Common Stock and Company Preferred Stock described in Section 3.3(a). There are no shares of Company Common Stock or Company Preferred Stock reserved for issuance other than as described in Sections 3.3(a). There are no authorized or outstanding any subscriptions, options, conversion or exchange rights, warrants, repurchase or redemption agreements, or other agreements, claims or commitments of any nature whatsoever obligating the Company to issue, transfer, deliver or sell, or cause to be issued, transferred, delivered, sold, repurchased or redeemed, additional shares of the capital stock or other securities of Company or obligating the Company to grant, extend or enter into any such agreement, other than the Options listed in Section 3.3(b)(i) and the Warrants listed in Section 3.3(b)(ii) of the Company Disclosure Schedule. After the Effective Time, no Options or Warrants shall be exercisable for or convertible into any security of Parent, the Surviving Company or any Subsidiary of Parent or the Surviving Company.
(d) Not less than two (2) Business Days prior to the Closing, the Company has prepared and delivered to Parent a spreadsheet, which sets forth the holdings of each holder of Company Capital Stock, Options or Warrants (the “Spreadsheet”). The Spreadsheet accurately sets forth, as of the Closing, (i) the name of each Person that is the registered owner of any shares of Company Capital Stock, Options or Warrants and the number and kind of such shares so owned, or subject to Options or Warrants so owned, by such Person, (ii) the portion of the Merger Consideration payable to each such Person, including the portion of the Closing Payment and (iii) such holder’s Pro Rata Share of the Escrow Amount and the Earn-Out Consideration. The number of such shares set forth as being so owned, or subject to Options or Warrants so owned, by such Person will constitute the entire interest of such Person in the issued and outstanding capital stock, voting securities or other securities of the Company.

3.4 Authority. The Company has all requisite corporate power and authority to enter into this Agreement and each of the Certificate of Merger and each other agreement, certificate or document contemplated thereby or hereby (each, a “Related Agreement”) to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Related Agreements to which the Company is a party and the consummation by the Company of the transactions contemplated hereby and thereby (including the Merger) have been duly authorized by all necessary corporate action on the part of the Company and no further action is required on the part of the Company to authorize this Agreement and the Related Agreements to which it is a party and the transactions contemplated hereby and thereby (including the Merger), subject only to the approval of this Agreement and the Merger by the Company Stockholders. Section 3.4 of the Company Disclosure Schedule sets forth all necessary consents, waivers and approvals of the Company Stockholders in connection with this Agreement and the Related Agreements and the performance by the Company of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby, including the Merger (the “Company Stockholder Requisite Consent”). This Agreement, the Related Agreements and the Merger have been unanimously approved by the board of directors of the Company. This Agreement has been, and each of the Related Agreements to which the Company is a party will be at the Closing, duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by the other parties hereto and thereto (other than the Company), constitutes, and in the case of the Related Agreements they will at Closing constitute, valid and binding obligations of the Company, enforceable against the Company, in accordance with their respective terms, except as such enforceability may be subject to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the enforcement of creditors’ rights generally and by general principles of equity regardless of whether such enforceability is considered in a proceeding at law or in equity; provided, however, that the Certificate of Merger will not be effective until filed with the Secretary of State of the State of Delaware.

3.5 No Conflict. The execution and delivery of this Agreement by the Company does not, and the compliance with and performance of this Agreement and the consummation of the transactions contemplated hereby by the Company will not, (i) conflict with, or result in any violation or loss of benefit of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation under (any such event, a “Conflict”)(i) any provision of the Certificate of Incorporation or Bylaws of the Company, (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of, or result in a change in the rights or obligations of the parties to, any note, bond, mortgage, indenture, or Material Contract to which the Company or any of the Subsidiaries is a party or by which any of them or any of their respective properties or assets may be bound, (iii) violate any Law or Authorization applicable to the Company, any of the Subsidiaries or by which any of their respective properties or assets is bound or (iv) result in the creation of any Lien on the assets or properties of the Company or a Subsidiary. Section 3.5 of the Company Disclosure Schedule sets forth all notices to, and all necessary consents, waivers and approvals of, parties to any Material Contracts as are required thereunder in connection with the Merger, or for any such Material Contract to remain in full force and effect without limitation, modification or alteration (including payment of any additional amounts or consideration other than ongoing fees, royalties or payments which the Company or any of its Subsidiaries, as the case may be, would otherwise be
required to pay pursuant to the terms of such Material Contracts had the transactions contemplated by this Agreement not occurred) after the Effective Time so as to preserve all material rights of, and benefits to, the Company and its Subsidiaries, as the case may be, under such Material Contracts from and after the Effective Time. The Company has delivered a true and correct copy of the Certificate of Incorporation and Bylaws of the Company, each as amended to date, to Parent.

3.6 Consents. No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Entity or any third party is required by or with respect to the Company in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for the filing of the Certificate of Merger, the adoption of this Agreement and approval of the transactions contemplated by this Agreement by the Company Stockholder Requisite Consent.

3.7 Company Financial Statements. Section 3.7 of the Company Disclosure Schedule sets forth (i) the audited balance sheets of the Company as of December 31, 2016 and 2015 and the related audited statements of operations, changes in stockholders’ equity and cash flows of the Company for the years then ended, and (ii) the unaudited balance sheet of the Company (the “Company Balance Sheet”) as of December 31, 2017 (the “Balance Sheet Date”) and the related unaudited statements of operations, changes in stockholders’ equity and cash flows of the Company for the year then ended (the financial statements referred to in items (i) and (ii), collectively, the “Company Financial Statements”). The Company Financial Statements are derived from the books and records of the Company and have been prepared in accordance with GAAP, except for the absence of footnotes in the case of the unaudited Company Financial Statements. The Company Financial Statements fairly present, in all material respects, the financial condition, results of operations and cash flows of the Company as of the dates and during the periods indicated therein.

3.8 Liabilities; Indebtedness.

(a) The Company does not have any Liability, other than (i) Liabilities reflected in or reserved against on the Company Balance Sheet or in the notes thereto, (ii) Liabilities to trade creditors incurred in the ordinary course of business since the Balance Sheet Date, (iii) Transaction Expenses and (iv) Liabilities set forth in Section 3.8(a) of the Company Disclosure Schedule.

(b) Section 3.8(b) of the Company Disclosure Schedule sets forth the Indebtedness of the Company. The Company has no other Indebtedness outstanding as of the date hereof except for Indebtedness set forth on Section 3.8(b) of the Company Disclosure Schedule.

3.9 Absence of Certain Changes. Except as set forth in Section 3.9 of the Company Disclosure Schedule, since the Balance Sheet Date and through and including the date of this Agreement, there has not been, occurred or arisen any:

(a) transaction by the Company, except in the ordinary course of business and consistent with past practices;

(b) amendments or changes to the Certificate of Incorporation or Bylaws of the Company;

(c) capital expenditure or capital commitment by the Company of $10,000 in any individual case or $20,000 in the aggregate;

(d) payment, discharge or satisfaction, in any amount in excess of $10,000 in any one case, or $20,000 in the aggregate, of any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise, other than payments, discharges or satisfactions in the ordinary course of business or of liabilities reflected or reserved against in the Company Balance Sheet;
(e) destruction of, damage to or loss of any material assets of the Company (whether or not covered by insurance);

(f) work stoppage, labor strike or other labor trouble, or any action, suit, claim, labor dispute or grievance relating to any labor, employment and/or safety matter involving the Company, including without limitation charges of wrongful discharge, discrimination, or other unlawful labor and/or employment practices or actions;

(g) change in accounting methods or practices (including any change in depreciation or amortization policies or rates) by the Company;

(h) revaluation by the Company of any of its assets, including, without limitation, the writing down of the value of inventory or writing off of notes or accounts receivable, in any case in excess of $10,000 in the aggregate;

(i) declaration, setting aside or payment of a dividend on or other distribution (whether in cash, stock or property) with respect to any Company Capital Stock, Options or Warrants, or any direct or indirect redemption, purchase or other acquisition by the Company or any Subsidiary of any Company Capital Stock, Options or Warrants;

(j) increase in the salary or other compensation payable or to become payable by the Company to any of its officers, directors, employees, consultants, contractors, or advisors, including, without limitation, the modification of any existing compensation or equity arrangements with such individuals (including any repricing of any Options or any amendment of any vesting terms related to Options or restricted stock held by such individuals), or the declaration, payment or commitment or obligation of any kind for the payment, by the Company, of a bonus or other additional salary or compensation to any such Person;

(k) (A) grant of any severance or termination pay (i) to any director or officer or (ii) to any other Employee, (B) adoption or amendment of any employee benefit plan or severance plan, (C) entering into any employment contract, extension of any employment offer, payment or agreement to pay any bonus or special remuneration to any director or Employee;

(l) any amendment, modification or other alteration to any Material Contract;

(m) sale, lease, license or other disposition of any of the assets or properties of the Company other than in the ordinary course of business, or creation of any Lien in such assets or properties, except licensing of software in the ordinary course of business and consistent with past practices and sales of assets or properties not in excess of $10,000 in the aggregate;

(n) loan by the Company to any Person, incurring by the Company of any indebtedness, guaranteeing by the Company of any indebtedness, issuance or sale of any debt securities of the Company or purchase of or guaranteeing of any debt securities of others;

(o) waiver or release of any right or claim of the Company, including any write-off or other compromise of any account receivable of the Company, except in the ordinary course of business and consistent with past practices;

(p) commencement, notice or threat of commencement, of any lawsuit or proceeding against or investigation of the Company, or commencement or settlement of any litigation by the Company;

(q) (i) transfer or sale by the Company of any rights to the Company Intellectual Property or the entering into of any license agreement, distribution agreement, security agreement, assignment or other
conveyance or option for the foregoing, with respect to the Company Intellectual Property with any Person, (ii) the purchase or other acquisition of any
Intellectual Property or the entering into of any license agreement, distribution agreement, reseller agreement, security agreement, assignment or other
conveyance or option for the foregoing, with respect to the Intellectual Property of any Person, (iii) change in pricing or royalties set or charged by the
Company to its customers or licensees or in pricing or royalties set or charged by Persons who have licensed Intellectual Property to the Company or
(iv) entering into, or amendment of, any agreement with respect to the development of any Intellectual Property with a third party;

(r) agreement, or modification to any agreement, pursuant to which any Person was granted marketing, distribution, development,
manufacturing or similar rights of any type or scope with respect to any products, services or technology of the Company or any of its Subsidiaries;

(s) issuance, grant, or sale (or authorization of the same) by the Company of any Company Capital Stock, any Options, any Warrants, or any
securities exchangeable, convertible or exercisable therefore, or any securities, subscriptions, warrants, options or rights to purchase any of the
foregoing, or purchase or proposed purchase of any of the foregoing;

(t) event, occurrence, change, effect or condition of any character that has had or reasonably could be expected to have a Material Adverse
Effect; or

(u) agreement, whether in writing or otherwise, to do any of the foregoing.

3.10 Taxes.

(a) The Company has timely filed or caused to have been timely filed all Tax Returns required to have been filed by or with respect to the
Company. Each such Tax Return was correct and complete in all material respects. All Taxes (whether or not shown as owed on any such Tax Return)
owed by the Company have been timely paid.

(b) The Company has timely withheld and timely paid all Taxes required to have been withheld and paid by it and has complied in all
respects with applicable Law relating to the withholding of Taxes.

(c) There is no claim, audit, action, suit or proceeding pending, or, to the Company’s Knowledge, threatened in writing against or with
respect to the Company in respect of any Tax or Tax Return.

(d) There are no Liens for Taxes (other than for current Taxes not yet due and payable) upon the assets of the Company. There are no
outstanding agreements, waivers or arrangements extending the statutory period of limitation applicable to any claim for, or the period for the
collection or assessment of, Taxes due from or with respect to the Company for any taxable period. The Company is not a party to any contract the
primary function of which is to serve as a Tax allocation or sharing agreement.

(e) Except as set forth on Section 3.10(e) of the Company Disclosure Schedule, the Company has not received any written notice from any
Tax Authority that the Company should have filed Tax Returns in a jurisdiction in which it failed to file.

(f) No grants have been provided by the United States, a state thereof, a political subdivision of a state or any other Governmental Entity
for use in the development, permitting, acquisition, installation, ownership, marketing, sale, financing and planned operation of any asset held by the
Company.

(g) The Company has not entered into any “listed transactions” as defined in Treasury Regulation Section 1.6011-4(b)(2), and any
reportable transactions in which the Company has entered into have been properly reported as required by Treasury Regulation Section 1.6011-4,
including filing Form 8886 with Tax Returns and with the Office of Tax Shelter Analysis.

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3.11 Restrictions on Business Activities. Except as set forth in Section 3.11 of the Company Disclosure Schedule, there is no agreement (noncompete or otherwise), judgment, injunction, order or decree to which the Company is a party or otherwise binding upon the Company which has had or could be reasonably expected to have the effect of prohibiting or impairing any business practice of the Company, any acquisition of property (tangible or intangible) by the Company or the conduct of business by the Company. Without limiting the foregoing, the Company has not entered into any agreement under which the Company is restricted from selling, licensing manufacturing or otherwise distributing any of its technology or products or from providing services to customers or potential customers or any class of customers, in any geographic area, during any period of time, or in any segment of the market or granted any Person exclusive rights to sell, license, manufacture or otherwise distribute any of its technology or products in any geographic area or with respect to any customers or potential customers or any class of customers during any period of time or in any segment of the market.

3.12 Title to Properties; Absence of Liens.

(a) (i) The Company does not own and has never owned any real property. All of the real property used or occupied by the Company, together with all buildout, fixtures and improvements created thereon ("Real Property"), is leased or subleased by the Company, or the Company has an interest in such Real Property pursuant to a warehousing, license or occupancy agreement ("Leased Real Property").

(ii) Section 3.12(a)(ii) of the Company Disclosure Schedule sets forth all leases, subleases and other agreements pursuant to which the Company derives its rights in the Leased Real Property as well as all leases, subleases and other agreements pursuant to which the Company leases or subleases any of the Leased Real Property to any other Person (the "Leases"), including, with respect to each such Lease, the identity of the landlord or sublandlord, the date of such Lease and each amendment thereto, the aggregate annual rent, and the address of all buildings. The Leases are valid, binding and enforceable in accordance with their respective terms, and there does not exist under any such Lease any default by the Company or, to the Company's Knowledge, by any other Person, or any event that, with or without notice or lapse of time or both, would constitute a default by the Company or, to the Company's Knowledge, by any other Person. The Company has delivered to Parent complete copies of all Leases, including all amendments and agreements related thereto, and the Leases constitute the entire agreement between the Company and each landlord or sublandlord with respect to the Leased Real Property. All rent and other charges currently due and payable under the Leases have been paid.

(b) The Company has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of its material tangible properties and assets, real, personal and mixed, used or held for use in its business, free and clear of any Liens, except as reflected in the Company Financial Statements or in Section 3.12(b) of the Company Disclosure Schedule and except for liens for Taxes not yet due and payable and such imperfections of title and encumbrances, if any, which are not material in character, amount or extent, and which do not materially detract from the value, or materially interfere with the present use, of the property subject thereto or affected thereby.

(c) All properties and assets owned, leased or used by the Company are (i) adequate for the conduct of the business of the Company as currently conducted and as currently proposed to be conducted and (ii) in good operating condition, subject to normal wear and tear, and reasonably fit and usable for the purposes for which they are being used.


(a) Section 3.13(a) of the Company Disclosure Schedule lists all registered Intellectual Property Rights that are owned by the Company and all material Company Intellectual Property that is licensed from another Person by the Company (other than nonexclusive licenses for commercial off-the-shelf computer software that are generally available on nondiscriminatory pricing terms). Except as set forth in Section 3.13(a) of the Company Disclosure Schedule, each item of Company Intellectual Property is either: (i) owned solely by the
Company free and clear of any Liens; or (ii) rightfully used and authorized for use by the Company and its successors pursuant to a valid and enforceable written license. Except as set forth in Section 3.13(a) of the Company Disclosure Schedule, the Company has all rights in the Company Intellectual Property necessary to carry out the Company’s current activities, or any activities currently contemplated by the Company. Except as set forth in Section 3.13(a) of the Company Disclosure Schedule, the transactions contemplated under this Agreement will not alter, impair or otherwise affect any rights of the Company in any Company Intellectual Property.

(b) The Company is not in violation, in any material respect, of any license, sublicense or other agreement to which the Company is a party or otherwise bound relating to any of the Company Intellectual Property. Except as set forth in Section 3.13(b) of the Company Disclosure Schedule, the Company is not obligated to provide any consideration (whether financial or otherwise) to any third party, nor is any third party otherwise entitled to any consideration, with respect to any exercise of rights by the Company in the Company Intellectual Property.

c) The use by the Company of the Company Intellectual Property as currently used and as currently proposed to be used does not infringe any other Person’s Intellectual Property Rights. No claims or threats (i) challenging the validity, enforceability, effectiveness or ownership by the Company of any of the Company Intellectual Property or (ii) to the effect that the use, reproduction, modification, manufacture, distribution, licensing, sublicensing, sale, or any other exercise of rights in any Company Intellectual Property by the Company, infringes or will infringe on any Intellectual Property Right of any Person have been asserted against the Company.

d) Except as set forth in Section 3.13(d) of the Company Disclosure Schedule, there are no legal or governmental proceedings, including interference, reexamination, reissue, opposition, nullity, or cancellation proceedings pending that relate to any of the Company Intellectual Property, other than review of pending patent applications, and the Company is not aware of any information indicating that such proceedings are threatened or contemplated by any Governmental Entity or any other Person. All granted or issued patents and mask works, all registered trademarks and service marks, and all copyrights owned by the Company are valid, enforceable and subsisting. To the Company’s Knowledge, there is no unauthorized use, infringement, or misappropriation of any of Company Intellectual Property by any third party, employee or former employee.

e) The Company has taken commercially reasonable measures to protect the proprietary nature of the Company Intellectual Property and to maintain in confidence all trade secrets and confidential information owned or used by the Company or any Subsidiary. The Company has secured from all parties (including employees) who have created any portion of, or otherwise have any rights in or to, the Company Intellectual Property owned by the Company valid and enforceable written assignments of any such work, invention, improvement or other rights to the Company.

f) Except as set forth in Section 3.13(f) of the Company Disclosure Schedule, the Company Intellectual Property does not include any Publicly Available Software and the Company has not incorporated any Publicly Available Software in whole or in part in any part of Company Intellectual Property in a manner that may subject Company Intellectual Property in whole or in part, to all or part of the license obligations of any Publicly Available Software.

g) Except as set forth in Section 3.13(g) of the Company Disclosure Schedule, no third parties have possession of any Company source code.

h) Section 3.13(h) of the Company Disclosure Schedule, sets forth (i) the Company’s network element modules and resource information modules with respect to which source code licenses have been granted to customers, (ii) the name of the customer who benefits from such license and (iii) the agreement under which the source code license was granted.
(a) “Material Contract” shall mean each Contract to which the Company or any of its Subsidiaries is a party or by which any of their respective assets are bound and under which there are Liabilities, receivables or ongoing obligations (other than customary confidentiality obligations):

(i) that is a collective bargaining agreements;

(ii) that is an employment or consulting Contract;

(iii) that provides for any bonus, deferred compensation, pension, profit sharing or retirement plans, or any other employee benefit plans or arrangements, including, without limitation, any stock option plan, stock appreciation rights plan or stock purchase plan;

(iv) the benefits of which will be increased or accelerated by the occurrence of any of the transactions contemplated by this Agreement;

(v) that is a fidelity or surety bond or completion bond;

(vi) that provides for indemnification by the Company of (A) a third party, other than in connection with a commercial agreement in the ordinary course of business and consistent with the Company’s past practice or (B) a director, officer or employee;

(vii) that limits the freedom of the Company to engage in any line of business or to compete with any Person;

(viii) that relates to the acquisition or disposition of any business or assets (whether by merger, sale of stock, sale of assets or otherwise);

(ix) that is a note, debenture, bond, equipment trust, letter of credit, loan or other Contract (A) for Indebtedness of or lending of money by or issued at the request of the Company, or (B) under which the Company has created, incurred, assumed or guaranteed (or may create, incur or guarantee) Indebtedness of any Person, or under which the Company has imposed a security interest on any of its material assets, which security interest secures outstanding Indebtedness of any Person;

(x) that is a purchase order, lease, license, contract or other agreement involving $10,000 or more,

(xi) that is a dealer, distribution, joint marketing (including any pilot program), original equipment manufacturer, value added, remarketer, reseller, referral, development, content provider, destination site or sales representative agreement,

(xii) pertaining to any government or non-government grants, whether pure grant or repayable by the Company;

(xiii) that is not cancelable by the Company without penalty within one (1) year.

(b) Set forth in Section 3.14(b) of the Company Disclosure Schedule is a complete and accurate list of each Material Contract. The Company has provided to Parent accurate and complete copies of each Material Contract. Each Material Contract is in full force and effect and is the legal, valid and enforceable obligation of the Company and, to the Company’s Knowledge, each other party thereto in accordance with its terms.

(c) The Company is not, and to the Company’s Knowledge, no other party thereto is, in material violation of or in breach or default in the performance, observance or fulfillment of any obligation, covenant,
condition or other term contained in any Material Contract, and no event has occurred that with notice or the lapse of time or both constitutes a material violation, breach or default thereunder by the Company or, to the Company’s Knowledge, any counterparty to any Material Contract. The Company has not given or received written notice to or from any Person (i) relating to any such alleged or potential default that has not been cured or (ii) conveying the intention to terminate or not renew such Material Contract.

3.15 **Change of Control Payments.** There is no plan or agreement pursuant to which any amounts may become payable (whether currently or in the future) to current or former officers, directors or employees of or consultants to the Company as a result of or in connection with the Merger.

3.16 **Interested Party Transactions.**

(a) To the Company’s Knowledge, no officer, director or Affiliate of the Company (nor any descendant or spouse of any of such Persons, or any trust, partnership or corporation in which any of such Persons has or has had an economic interest), has or has had, directly or indirectly, (i) an economic interest in any Person which furnished or sold, or furnishes or sells, services or products that the Company furnishes or sells, or proposes to furnish or sell, (ii) an economic interest in any Person that purchases from or sells or furnishes to, the Company any goods or services, or (iii) a beneficial interest in any contract or agreement set forth in any Contract; provided, however, that ownership of no more than one percent (1%) of the outstanding voting stock of a publicly traded corporation shall not be deemed an “economic interest in any entity” for purposes of this Section 3.16.

(b) There are no receivables of the Company owed by any director, officer, employee, or consultant to the Company (or descendant, or spouse of any such Persons, or any trust, partnership, or corporation in which any of such Persons has an economic interest), other than advances in the ordinary and usual course of business for reimbursable business expenses (as determined in accordance with the Company’s established employee reimbursement policies and consistent with past practice).

3.17 **Compliance with Laws.**

(a) The Company is, and since inception has been, in compliance, in all material respects, with all applicable Laws and Authorizations. The Company has not received any written notice (i) of any administrative, civil or criminal investigation or audit by any Governmental Authority relating to the Company, or (ii) from any Person alleging that the Company is not in compliance in any material respect with any applicable Law, and there are no pending, or to the Knowledge of the Company, threatened, hearings, investigations or other actions with respect to any such notice, investigation, audit or alleged non-compliance.

(b) **Section 3.17(b) of the Company Disclosure Schedule** lists all Authorizations that are held by the Company or any of its Subsidiaries. Each Authorization held by the Company is in full force and effect. The Company is in compliance with, not in violation of, and has not received written notice from any Governmental Entity of any violations of any such Authorizations. The Company holds all Authorizations necessary for it to own, lease or otherwise hold and operate its properties and assets and to carry on its businesses and operations as currently conducted.

3.18 **Litigation.** Except as set forth on **Section 3.18 of the Company Disclosure Schedule,** there is no action, suit or proceeding, claim, complaint, arbitration, litigation, investigation or other similar proceeding, whether civil or criminal, at law or in equity, by or before any Governmental Authority or arbitrator (each, an “**Action**”) pending or, to the Company’s Knowledge, threatened (a) against the Company, or any of its directors, officers or employees in their respective capacities as officers, directors and/or employees of the Company, or (b) that challenges or seeks to prevent, enjoin or otherwise delay the Merger. There is no unsatisfied judgment, penalty or award against or affecting the Company, or, to the Company’s Knowledge, any of the Company’s directors,
officers or employees in their respective capacities as officers, directors and/or employees of the Company, or any of the Company’s properties or assets.

3.19 **Brokers’ and Finders’ Fees.** No broker, finder, or investment banker is entitled to any brokerage, finder or other fee or commission in connection with the transactions contemplated by this Agreement based on any agreement, arrangement or understanding with the Company or any Subsidiary, or any action taken by the Company.

3.20 **Insurance.** Section 3.20 of the Company Disclosure Schedule sets forth a list of all insurance policies owned or held by the Company. All such policies are in full force and effect and are valid and enforceable in accordance with their terms. The Company is not in default with respect to any provision contained in such policy and all premiums with respect thereto have been paid to the extent due. There are no outstanding unpaid claims under any such policy. The Company has not received notice of cancellation or non-renewal of any such policy or disclaiming coverage or reserving rights with respect to any claim or any such policy in general.

3.21 **Minute Books.** The corporate minutes of the Company made available to Parent are complete and accurate in all material respects, and fairly summarize all meetings held, and accurately reflect in all material respects all other corporate actions of the Company Stockholders and the board of directors of the Company (and any committees thereof), except for minutes and actions related to this Transaction which will be made available to Parent following Closing.

3.22 **Employee Benefit Plans.**

(a) Section 3.22(a) of the Company Disclosure Schedule sets forth a list of all plans, agreements, policies or other obligations providing for fringe benefits (including vacation, paid holidays, personal leave, employee discounts, educational benefits or similar programs) and each other benefit, bonus, incentive compensation, deferred compensation, change in control, profit sharing, severance, retirement, health, life, disability, group insurance, employment, equity option, equity purchase right, unit appreciation right, performance unit, supplemental unemployment, layoff, consulting or other similar plan, agreement, policy or understanding whether funded or not funded, in each case, that is sponsored or maintained by, or required to be contributed to, or with respect to which any potential liability is borne by the Company or any of its Affiliates (the “Employee Plans”).

(b) The Employee Plans have been maintained, operated, and administered in compliance with their terms and any related documents or agreements and in compliance with Applicable Law, in each case in all material respects, and all material contributions, premiums and benefit payments under or in connection with the Employee Plans that are required to have been made as of the date hereof in accordance with the terms of the Employee Plans or Applicable Law have been timely made or properly accrued in compliance with Applicable Law.

(c) There are no pending or, to the Company’s Knowledge, threatened claims and no pending or, to the Company’s Knowledge, threatened litigation with respect to any Employee Plans, other than ordinary and usual claims for benefits by participants and beneficiaries.

(d) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has been determined by the Internal Revenue Service to be qualified under Section 401(a) of the Code and, to the Company’s Knowledge, nothing has occurred that would adversely affect the qualification or tax exemption of any such Employee Plan. With respect to any Employee Plan, neither the Company nor any of its Affiliates has engaged in a transaction in connection with which the Company or any of its Affiliates would reasonably be subject to either a civil penalty assessed pursuant to Section 409 or 502(i) of ERISA or a material tax imposed pursuant to Section 4975 or 4976 of the Code.

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(e) Neither the Company nor any of its Affiliates has any agreement, commitment, or obligation to modify or amend any existing Employee Plan.

(f) No Employee Plan exists that, as a result of the execution of this Agreement, the consummation of the Merger or the other transactions contemplated by this Agreement, would reasonably be expected to (i) result in the payment of severance or any increase in severance pay upon any termination of employment after the date of this Agreement; (ii) accelerate the time of payment or vesting or result in any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or result in any other material obligation pursuant to, any of the Employee Plans; or (iii) result in payments under any of Employee Plan that would not be deductible under Section 280G of the Code or (iv) limit or restrict the right to merge, materially amend, terminate or transfer the assets of any Employee Plan on or following the Effective Time.

(g) Neither the Company nor its ERISA Affiliates has contributed (or had any obligation of any sort) in the last six years to a plan that is subject to Section 412 of the Code or Section 302 or Title IV of ERISA. For purposes of this Agreement, “ERISA Affiliate” means all employers (whether or not incorporated) that would be treated together with the Company or any of its Affiliates as a “single employer” within the meaning of Section 414 of the Code in the last six years.

(h) Neither the Company nor any ERISA Affiliate has maintained, established, participated in or contributed to, or is or has been obligated to contribute to, or has otherwise incurred any obligation or liability (including any contingent liability) under, any “multiemployer plan” as that term is defined in Section 3(37) of ERISA in the last six years. No Employee Plan is a “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA).

(i) No Employee Plan provides for post-employment or post-retirement health, medical or life insurance benefits for current, former or retired employees of the Company or any Development Company, other than continuation coverage required under the “COBRA” provisions of ERISA and the Code.

(j) Each Employee Plan that is a “nonqualified deferred compensation plan” (within the meaning of Section 409A of the Code) is in documentary compliance with, and has been operated and administered in all material respects in compliance with, Section 409A of the Code and the guidance issued by the Internal Revenue Service provided thereunder such that no adverse tax consequences will result for the Company, any Affiliate, or any applicable service provider.

(k) Neither the Company nor any Affiliate has any obligation to provide, and no Employee Plan or other agreement provides any individual with the right to, a gross up, indemnification, reimbursement or other payment for any excise or additional taxes, interest or penalties incurred pursuant to Section 409A or Section 4999 of the Code or due to the failure of any payment to be deductible under Section 280G of the Code.

3.23 Labor Matters

(a) The Company, prior to the execution hereof, has provided or made available to Parent a true, correct and complete schedule setting forth, with respect to each employee and individual independent contractor of the Company as of the date of this Agreement, the following information: name; job title; department for which he/she works; job location; full or part-time status; date of hire; and current annual base salary, wage rate or rate of compensation. Except as set forth in Section 3.23(a) of the Company Disclosure Schedule hereto, (i) the employment of each employee of the Company is terminable at will by the Company, and (ii) there are no outstanding Contracts or arrangements with respect to severance payments with any employee or former employee of the Company. No employee of the Company has provided notice to or otherwise informed the Company that he or she intends to resign or retire as a result of the transactions contemplated by this Agreement

(b) Since inception, the Company has complied in all material respects with all federal and state laws respecting employment and employment practices, terms and conditions of employment, worker classification,
wages and hours and nondiscrimination in employment, health and safety, workers’ compensation and the collection and payment of withholding and/or payroll Taxes and similar Taxes. Except as set forth on Section 3.23(b) of the Company Disclosure Schedule, there is no charge, complaint or proceeding pending, or to the Company’s Knowledge, threatened, nor has there been a charge, complaint or proceeding against the Company alleging unlawful discrimination in employment practices before any court or agency, and there is no charge of or proceeding pending, or to the Company’s Knowledge, threatened, nor has there been a charge or proceeding with regard to any unfair labor practice against the Company pending before the National Labor Relations Board or any Governmental Entity.

(c) The Company is and has been in compliance with the Worker Adjustment and Retraining Notification Act and any comparable foreign, state or local law, and has no liabilities or obligations thereunder.

3.24 Environmental Matters. Except as set forth in Section 3.24 of the Company Disclosure Schedule:

(a) The operations of the Company have been and are currently being conducted in compliance in all material respects with all applicable Environmental Laws and the Company is not aware of the existence of any condition or event regarding any Real Property, that would constitute a violation of any applicable Environmental Laws.

(b) Other than leases for office space entered into upon customary terms and conditions, neither the Company nor its subsidiaries have contractually, by operation of law or otherwise, assumed or succeeded to any environmental liabilities of any predecessors or any other Person.

(c) The Company has not received any notice, whether oral or written, from any Governmental Entity or third party asserting any liability under or violation of any Environmental Laws that remains outstanding or unresolved.

(d) The Company has provided to the Parent all environmental reports, assessments, audits, studies, investigations, data, Company Environmental Permits and other written environmental information in its custody, possession or control concerning the business of the Company and the Real Property.

3.25 Regulatory Matters.

(a) The Company is not currently engaged in, nor has previously engaged in, any activities requiring a Food and Drug Administration (“FDA”) registration or any other Authorization from the FDA, including, but not limited to, the development, testing, manufacture, marketing, assembly, distribution, commercialization, licensing, or sale of any software or other product subject to FDA regulation as a medical device.

(b) The Company has not received notice of, nor been subject to, any adverse inspectional finding, data integrity review, investigation, penalty, fine, reprimand, sanction, assessment, request for corrective or remedial action, warning letter, regulatory letter, untitled letter, FDA Form 483, or other compliance or enforcement notice, communication, or correspondence from FDA or any other Governmental Entity.

(c) Neither Company nor any of its employees, agents, or affiliates have (i) made an untrue statement of material fact or fraudulent statement any other Governmental Entity, or in any records or documentation prepared or maintained to comply with the applicable Laws; (ii) failed to disclose a material fact required to be disclosed to any Governmental Entity; (iii) or has ever been investigated by the FDA, National Institutes of Health, Office of the Inspector General for the Department of Health and Human Services, Department of Justice, or other comparable Governmental Entity for data or healthcare program fraud. Neither Company nor any of its officers, directors, or employees have made or offered any payment, gratuity or other thing of value that is prohibited by any Law to personnel of any Governmental Authority.
(d) Neither Company nor any of its employees, agents, contractors, stockholders, owners or directors have been excluded from, debarred, restricted or prohibited from participation in any federal health care program, including Medicare and Medicaid.

(e) The Company is and at all times has been in compliance in all material respects with all health care laws, including, without limitation, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh (the Medicare statute), including specifically, the Ethics in Patient Referrals Act, as amended (the Stark Law), 42 U.S.C. § 1395nn and all implementing Laws and Orders; Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (the Medicaid statute); the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7(b); the False Claims Act, 31 U.S.C. §§ 3729-3733 (as amended); the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Anti-Kickback Act of 1986, 41 U.S.C. §§ 5158; the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a and 1320a-7b; the Exclusion Laws, 42 U.S.C. § 1320a-7; the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d-1329d-8, as amended by the Health Information Technology for Economic and Clinical Health Act, enacted as Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (collectively, “HIPAA”) and all applicable implementing Laws and Orders; Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v; the False Claims Act, 31 U.S.C. §§ 3729-3733 (as amended); the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Anti-Kickback Act of 1986, 41 U.S.C. §§ 5158; the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a and 1320a-7b; the Exclusion Laws, 42 U.S.C. § 1320a-7; the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d-1329d-8, as amended by the Health Information Technology for Economic and Clinical Health Act, enacted as Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (collectively, “HIPAA”) and all applicable implementing Laws and Orders; and any similar state and local Laws and Orders; and all applicable federal, state, and local licensing, certificate of need, corporate practice of medicine, fee splitting, state anti-kickback or self-referral, regulatory and reimbursement Laws and Orders applicable to the services provided by the Company, its employees, or its affiliates.

(f) The Company is not and has never been the subject of an audit, inspection, investigation, or review by a Governmental Entity, including, without limitation, the Medicare program, or any other commercial or private third party payor or insurance plan.

(g) The Company has, at all times, engaged properly licensed healthcare professionals to provide clinical oversight and supervision of the services provided by the Company, its employees, or its affiliates in accordance with and as may be required by applicable state laws.

3.26 Representations Complete. None of the representations or warranties made by the Company in this Agreement or any Related Agreement, nor any statement made in the Company Disclosure Schedule or any certificate furnished by the Company pursuant to this Agreement, when taken together, (i) contains any untrue statement of a material fact, or (ii) omits to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Each of Parent and Merger Sub jointly and severally represents, warrants and covenants to the Company as follows:

4.1 Organization of Parent and Merger Sub. Parent is a corporation duly organized and validly existing and in good standing under the laws of the State of Delaware. Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Each of Parent and Merger Sub has the corporate power to own, lease and operate its properties and to carry on its business as now being conducted and is duly qualified or licensed to do business and is in good standing as a foreign corporation in each jurisdiction in which the failure to be so qualified has had or could be reasonably expected to have a material adverse effect on Parent. Parent has heretofore made available to the Company a complete and correct copy of its certificate of incorporation and bylaws, each as amended to the date hereof. Such certificate of incorporation and bylaws, each as amended to date, are in full force and effect, Parent is not violation of any provision thereof. Merger Sub was formed solely for the purpose of effecting the Merger and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated hereby.
4.2 Authority. Parent and Merger Sub have all requisite corporate power and authority to execute and deliver this Agreement, to perform their obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Parent and Merger Sub. This Agreement has been duly executed and delivered by Parent and Merger Sub and constitutes the legal, valid and binding obligation of Parent and Merger Sub, enforceable against each of them in accordance with its terms, except as the enforcement hereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors’ rights generally and (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

4.3 Consents and Approvals; No Violations. The execution and delivery of this Agreement by Parent and Merger Sub do not, and, upon the filing of the Parent Restated Certificate, the compliance with and performance of this Agreement and the consummation of the transactions contemplated hereby by Parent and Merger Sub will not, conflict with, or result in any violation of, or default under or give rise to a right of termination, cancellation or acceleration of any obligation under (i) any provision of the certificate of incorporation or bylaws of Parent or Merger Sub or (ii) any note, bond, mortgage, indenture, lease, contract or other agreement to which the Parent or Merger Sub is a party or by which any of them or any of their respective properties or assets may be bound, (iii) violate any Law or Authorization applicable to the Parent or Merger Sub or by which any of their respective properties or assets is bound or (iv) result in the creation of any Lien on the assets or properties of Parent or Merger Sub. No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Entity is required by or with respect to Parent or Merger Sub in connection with the execution and delivery of this Agreement by Parent and Merger Sub or the consummation by Parent and Merger Sub of the transactions contemplated hereby except for the filing of the Parent Restated Certificate and the Certificate of Merger, and any other required certificates with the Secretary of State of the State of Delaware. Parent has delivered a true and correct copy of the Certificate of Incorporation and Bylaws of Parent, each as amended to date, to the Stockholder Representative. Prior to the Closing, Parent shall have delivered a true and correct copy of the Parent Restated Certificate to the Stockholder Representative.

4.4 Finder’s Fees. No Person retained by Parent or its affiliates is or will be entitled to any commission or finder or similar fee in connection with the Merger.

ARTICLE V
COVENANTS AND AGREEMENTS

5.1 Conduct of Business by the Company. During the period from the date of this Agreement to the Effective Time, except as otherwise contemplated by this Agreement, the Company shall use its commercially reasonable efforts to carry on their respective businesses in the usual, regular and ordinary course, consistent with the requirements of Law and past practice, and use its commercially reasonable efforts to preserve intact its present business organizations, keep available the services of its present advisors, managers, officers and employees and preserve their relationships with customers, suppliers, licensors and others having business dealings with them and continue to perform and comply with the terms of existing contracts as in effect on the date hereof (for the term provided in such contracts). Without limiting the generality of the foregoing, the Company will not (except as expressly permitted by this Agreement or as contemplated by the transactions contemplated hereby or to the extent that Parent shall otherwise consent in writing):

(a) (i) declare, set aside or pay any dividend or other distribution (whether in cash, stock, or property or any combination thereof) in respect of any of its capital stock, (ii) split, combine or reclassify any of its capital stock or (iii) repurchase, redeem or otherwise acquire any of its securities;

(b) authorize for issuance, issue, sell, deliver or agree or commit to issue, sell or deliver (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase or
otherwise) any stock of any class or any other securities (including indebtedness having the right to vote) or equity equivalents (including, without limitation, stock appreciation rights);

(c) sell, lease, license, assign, dispose, transfer or otherwise make any commitment with respect to assets;

(d) (i) except for any draw downs on the secured promissory note issued to Regence BlueShield as of March 12, 2018, incur any amount of indebtedness for borrowed money, guarantee any indebtedness, guarantee (or become liable for) any debt of others, make any loans, advances or capital contributions or issue or sell debt securities or warrants or rights to acquire any debt securities;

(e) mortgage, pledge, create, incur, assume or suffer to exist any Lien on any of the Company’s material assets;

(f) (i) enter into, adopt, amend or terminate any Employee Plan, (ii) enter into, adopt, amend or terminate any other agreement, arrangement, plan or policy between the Company and any of its officers, directors or employees, (iii) grant any increase in compensation or benefits, including the grant of any bonus, equity or equity-based compensation, to any current or former director, officer, employee or consultant, or (iv) fail to make contributions to Employee Plans in accordance with past practice;

(g) cause, permit or propose any amendments to the Certificate of Incorporation or Bylaws of the Company, except as expressly provided by the terms of this Agreement;

(h) adopt a plan of complete or partial liquidation or resolutions providing for or authorizing such a liquidation or a dissolution, merger, consolidation, restructuring, recapitalization or reorganization of the Company;

(i) make any Tax election or settle or compromise any federal, state, local or foreign Tax liability, change its annual tax accounting period, change any method of Tax accounting, enter into any closing agreement relating to any Tax, surrender any right to claim a Tax refund, or consent to any extension or waiver of the limitations period applicable to any Tax claim or assessment;

(j) settle or compromise any pending or threatened suit, action or claim where the amount paid in settlement or compromise exceeds $10,000 or which relates to the transactions contemplated hereby;

(k) forgive, compromise or waive any obligation or performance (past, present or future) owed to the Company, including under any Material Contract or other right or claim;

(l) amend, cancel, waive or modify any right under any Material Contract or any enter into any Material Contract; or

(m) authorize any of, or commit or agree to take any of the foregoing actions.

5.2 Access to Information. From the date hereof until the earlier of the Effective Time or the termination of this Agreement, the Company shall, and shall cause its officers, employees and agents to, afford to Parent and its officers, employees and agents access at all reasonable times to the Company’s employees, agents, properties, books, records and contracts reasonably required to respond to Parent’s diligence requests, and shall furnish Parent such financial, operating and other data and information as Parent may reasonably request. No investigation by Parent shall diminish or obviate any of the representations, warranties, covenants or agreements of the Company contained in this Agreement.

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5.3 **Exclusive Dealing.**

(a) The Company hereby agrees that from and after the date hereof and until the Closing or the termination of this Agreement in accordance with the terms hereof, neither the Company nor any of its Affiliates or representatives shall, directly or indirectly:

(i) solicit, initiate, consider, encourage or accept any other proposals or offers from any Person (a) relating to any direct or indirect acquisition or purchase of all or any portion of the capital stock or other equity or ownership interest of the Company or assets of the Company, (b) to enter into any merger, consolidation, exchange or other business combination relating to the Company or (c) to enter into a recapitalization, reorganization or any other extraordinary business transaction involving or otherwise relating to the Company; or

(ii) participate in any discussions, conversations, negotiations or other communications regarding, or furnish to any Person, any information with respect to, or otherwise cooperate in any way, assist or participate in, facilitate or encourage any effort or attempt by any other Person to seek to do any of the foregoing.

(b) The Company immediately shall cease and cause to be terminated all existing discussions, conversations, negotiations and other communications with any Persons conducted heretofore with respect to any of the foregoing. The Company shall notify the Parent promptly, but in any event within twenty-four (24) hours, orally and in writing if any such proposal or offer, or any inquiry or other contact with any Person with respect thereto, is made. The Company shall not release any Person from, or waive any provision of, any confidentiality agreement to which the Company is a party, without the prior written consent of Parent.

5.4 **Company Stockholder Requisite Consent.**

(a) Within three (3) Business Days after the execution of this Agreement and in lieu of calling a meeting of the Company Stockholders, the Company shall submit to the Company Stockholders a written consent in the form prepared by the Company and reasonably approved by Parent (the "Merger Consent") to the Company Stockholders. Upon due execution and delivery of Merger Consents constituting the Stockholder Requisite Consent to the Company by such stockholders in accordance with Section 228 of the DGCL, the Company shall deliver to Parent a copy of the Merger Consent, certified as correct and complete by an executive officer of the Company.

(b) Promptly following the delivery of the Merger Consent, but in no event later than three (3) Business Days thereafter, the Company shall deliver notice of the approval of the Merger by written consent of the Company Stockholders, pursuant to the applicable provisions of the DGCL and the Company’s certificate of incorporation and bylaws (the “Stockholder Notice”), to all Company Stockholders that did not execute the Merger Consent. The Stockholder Notice shall (i) include a statement to the effect that the board of directors of the Company determined that the Merger is advisable in accordance with Section 251(b) of the DGCL and in the best interests of the Company Stockholders and approved and adopted this Agreement, the Merger and the other transactions contemplated hereby, (ii) provide the Company Stockholders to whom it is sent with notice of the actions taken in the Merger Consent, including the approval and adoption of this Agreement, the Merger and the other transactions contemplated hereby in accordance with Section 228(e) of the DGCL and the bylaws of the Company and (iii) notify such Company Stockholders of their dissent and appraisal rights pursuant to Section 262 of the DGCL. The Stockholder Notice shall include therewith a copy of Section 262 of DGCL and all such other information as is required by the DGCL or as Parent shall reasonably request, and shall be sufficient in form and substance to start the twenty (20) day period during which a Company Stockholder must demand appraisal of such Company Stockholder’s capital stock as contemplated by Section 262(d)(2) of the DGCL. The Stockholder Notice shall additionally include therewith, to the extent not previously provided to such Company Stockholders, the Merger Consent, and shall request that such Company Stockholders duly execute and deliver to the Company a written consent to the Merger. All materials submitted to the Company Stockholders in
accordance with this Section 5.4(b) shall be subject to Parent’s advance review and reasonable approval, which Parent shall provide within two (2) Business Days of receipt of any materials submitted to Parent pursuant to this Section 5.4(b).

5.5 Notice to Warrant Holders. Promptly following the execution of this Agreement, but in no event later than three (3) Business Days thereafter, the Company shall deliver notices to each of the Warrant holders providing notice of this Agreement and the transactions contemplated hereby, and stating that as of the Effective Time, the Warrants shall no longer be of any force or effect and shall not be exchangeable for any securities of Parent or the Surviving Company.

5.6 Notification of Certain Matters. Between the date hereof and the Closing Date, the Company shall give prompt notice to Parent, and Parent and Merger Sub shall give prompt notice to the Company, of (a) the occurrence or non-occurrence of any event or circumstance the occurrence or non-occurrence of which would be likely to cause any representation or warranty contained in this Agreement to be untrue or inaccurate if made at such time and (b) any failure of the Company, Parent and Merger Sub, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder.

5.7 Further Assurances. Each of the parties shall execute such documents, further instruments of transfer and assignment and other papers and take such further actions as may be reasonably required or desirable to carry out the provisions hereof and the transactions contemplated hereby. Each Party shall use its respective commercially reasonable efforts to take such other actions to ensure that, to the extent within its control or capable of influence by it, the transactions contemplated by this Agreement shall be fully carried out in a timely fashion.

5.8 Public Announcements. Neither Parent, Company, the Stockholder Representative nor any of their respective Affiliates shall issue any press release or other public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the mutual written approval of Parent and the Stockholder Representative, unless disclosure is otherwise required by Law or by the applicable rules of any stock exchange, provided that, to the extent required by Law, the Party intending to make such release shall, prior to such release, consult with the other Party with respect to the text thereof.

5.9 Indemnification of Directors and Officers.

(a) Indemnification. For six years from and after the Effective Time, the Surviving Company shall, to the extent permitted under applicable law, continue to indemnify and hold harmless all past and present directors, officers, employees and agents of the Company ("Covered Persons") after the Effective Time to the same extent such Persons are indemnified as of the date of this Agreement by the Company, pursuant to the Company’s certificate of incorporation, the Company’s bylaws and indemnification agreements (but only to the extent such agreements are set forth on the Company Disclosure Schedule) with any Covered Persons as in effect on the date of this Agreement, against and from any costs or expenses (including reasonable attorneys’ fees), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, to the extent such claim, action, suit proceeding or investigation arises out of or pertains to acts or omissions occurring prior to the Effective Time. If any claim, action, suit, proceeding or investigation is made against any Covered Person with respect to matters subject to indemnification hereunder on or prior to the sixth anniversary of the Effective Time, the provisions of this Section 5.3 shall continue in effect until the final disposition of such claim, action, suit, proceeding or investigation. Notwithstanding anything to the contrary contained in this Section 5.3 or elsewhere in this Agreement, the Surviving Company shall not, without the prior written consent of such Covered Person (not to be unreasonably withheld, conditioned or delayed), settle or compromise or consent to the entry of any judgment or otherwise seek termination with respect to any claim, action, suit, proceeding or investigation, unless such settlement, compromise, consent or termination includes an unconditional release of such Covered Person covered by the claim, action, suit, proceeding or investigation from all liability arising out of such claim,
(b) **D&O Tail Policy.** Immediately prior to the Effective Time, the Company will purchase a 6-year “tail” directors’ and officers’ liability insurance and fiduciary insurance policy to cover the Surviving Company’s indemnification obligations set forth in Subsection (a) above of this Section 5.3 (the “D&O Tail Policy”). From and after the Effective Time, the Surviving Company will maintain the D&O Tail Policy in full force and effect until the Surviving Company’s indemnification obligations set forth in Subsection (a) above have either expired or been fulfilled. The cost of the D&O Tail Policy shall be a Transaction Expense.

(c) **Assumption of Obligations.** In the event the Surviving Company (A) consolidates with or merges into any other person and shall not be the continuing or Surviving Company or entity of such consolidation or merger or (B) transfers all or substantially all of its properties and assets to any person, then, and in each such case, the Surviving Company shall cause such continuing or Surviving Company or entity or transferee of such assets, as the case may be, to assume the obligations set forth in this Section 5.3.

(d) **No Modification without Consent.** The obligations under this Section 5.3 shall not be terminated or modified in such a manner as to affect adversely any Covered Person without the consent of such affected Covered Person, unless such change is required to comply with applicable law. The provisions of this Section 5.3 shall survive the consummation of the Merger and are intended to be for the benefit of, and shall be enforceable by, each of the Covered Persons and their respective successors, heirs and personal representatives.

5.10 **Employees, Employee Benefits.**

(a) Parent agrees that during the period commencing at the Closing and ending on December 31, 2018 (but not beyond the date on which the applicable Company Employee’s employment with the Company ends), Parent shall, or shall cause the Surviving Company to, provide each employee of the Company who remains employed by the Company immediately after the Closing (the “Company Employee”) with: (i) base salary or hourly wages which are no less than the base salary or hourly wages provided by the Company to such employee immediately prior to the Closing; and (ii) retirement and welfare benefits that are substantially comparable in the aggregate to those provided by the Company to such employee immediately prior to the Closing.

(b) In addition, and without limiting the generality of the foregoing: (i) each Company Employee shall be immediately eligible to participate, without any waiting time, in any and all Post-Closing Plans to the extent coverage under such Post-Closing Plan replaces coverage under any Employee Plan in which such Company Employee was participating immediately prior to the Closing; and (ii) for purposes of each Post-Closing Plan providing medical, dental, pharmaceutical and/or vision benefits to any Company Employee, Parent shall use reasonable efforts to cause all pre-existing condition exclusions, waiting periods and actively-at-work requirements of any such Post-Closing Plan to be waived for such Company Employee and his or her covered dependents to the extent such requirement was waived or satisfied prior to Closing, and Parent shall use reasonable efforts to cause, with respect to the plan year in which the Company Employee’s participation in such Post-Closing Plan begins, any eligible expenses incurred by such Company Employee and his or her covered dependents under the corresponding Employee Plan during such plan year through the date such Company Employee’s participation in such Post-Closing Plan begins to be taken into account under such Post-Closing Plan for such plan year for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Company Employee and his or her covered dependents as if such amounts had been paid in accordance with such Post-Closing Plan.

5.11 **Disclosure Schedule Update.** The Company acknowledges that the Company Disclosure Schedule provided as of the date of this Agreement is incomplete. The Company agrees to deliver a complete and correct Company Disclosure Schedule to Parent on or before April 4, 2018. Parent shall have the right to
terminate this Agreement due to any information disclosed on the Disclosure Schedule Update or provided as supplemental due diligence with respect thereto at any time prior to the date that is three (3) Business Days thereafter. From and after April 5, 2018, the Company shall have the right to supplement or amend the information contained in the Company Disclosure Schedule (the “Disclosure Schedule Update”). The Company shall notify Parent when such Disclosure Schedule Update is complete. Parent shall have three (3) Business Days following delivery by the Company of the Disclosure Schedule Update to review the Disclosure Schedule Update and deliver to the Company a supplemental due diligence request based on its review thereof. In the event the Disclosure Schedule Update provides information that is a material change to the information provided as of the date of the original Company Disclosure Schedules, Parent shall have the right to terminate this Agreement. For the avoidance of doubt, any matter, item, occurrence or change included in the Disclosure Schedule Update shall not be deemed to be incorporated into the Company Disclosure Schedule for purposes of the indemnification provisions set forth in Article VII hereof, and Parent shall retain all rights set forth herein with respect to any such matter, item, occurrence or change.

ARTICLE VI
CONDITIONS TO CLOSING

6.1 Conditions to the Obligations of Each Party to Effect the Merger. The respective obligations of Parent, Merger Sub and the Company to effect the Merger are subject to the satisfaction (or waiver by consent of each Party, where permissible), at or prior to the Effective Time, of each of the following conditions:

(a) Stockholder Approval. The Company shall have obtained the affirmative vote of the holders of Shares required to adopt this Agreement and the Merger in accordance with the provisions of the DGCL and the Certificate of Incorporation and Bylaws of the Company.

(b) Regulatory Approvals. All approvals, authorizations and consents of any Governmental Entity required to consummate the Merger shall have been obtained and remain in full force and effect, and all waiting periods relating to such approvals, authorizations and consents shall have expired or been terminated; provided, however, that the conditions of this Section 6.1(b) shall not apply to any Party whose failure to fulfill its obligations under this Agreement shall have been the cause of, or shall have resulted in, such failure to obtain such approval, authorization or consent.

(c) No Injunctions; Orders or Restraints; Illegality. No temporary restraining order, preliminary or permanent injunction or other order, decree or ruling issued by a court or other Governmental Entity of competent jurisdiction nor any statute, rule, regulation or executive order promulgated or enacted by any Governmental Entity of competent jurisdiction shall be in effect and have the effect of making the Merger illegal, or otherwise prohibiting consummation of the Merger.

6.2 Conditions to the Obligations of Parent and Merger Sub to Effect the Merger. The obligations of Parent and Merger Sub to effect the Merger are subject to the satisfaction of the following conditions, any one or more of which may be waived by Parent at or prior to the Effective Time:

(a) Representations, Warranties and Covenants. The representations and warranties made by the Company in this Agreement shall have been accurate as of the date of this Agreement and, other than representations and warranties made as of a particular date, shall be accurate in all material respects as of the Closing Date as if made on and as of the Closing Date. The Company shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by it on or prior to the Effective Time. The Company shall have delivered to Parent a certificate from its chief executive officer or chief financial officer, dated the Closing Date, to the foregoing effect.

(b) Corporate Certificates. The Company shall have delivered a copy of the Certificate of Incorporation of Company, as in effect immediately prior to the Closing Date, certified by the Secretary of State of the State of
Delaware and a certificate, as of the most recent practicable date, of the Secretary of State of the State of Delaware as to the Company’s corporate good standing.

(c) **Secretary’s Certificate.** The Company shall have delivered a certificate of the Secretary of the Company, dated as of the Closing Date, certifying as to (a) the incumbency of officers of the Company executing documents executed and delivered in connection herewith, (b) the Bylaws of the Company, (c) the resolutions of the Board of Directors of the Company authorizing and approving the applicable matters contemplated hereunder and (d) the resolutions of the Company Stockholders of the Company adopting this Agreement.

(d) **Consents.** The Company shall have obtained waivers or consents or provided notice, as applicable, which waivers and consents shall remain in full force and effect, with respect to all agreements set forth on Schedule 6.2(d).

(e) **No Company Material Adverse Change.** Since the Balance Sheet Date, no event shall have occurred that has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

(f) **Joinder to Merger Agreement.** Each of the Company Escrow Parties shall have executed and delivered to Parent a joinder to this Agreement, in the form of Exhibit A attached hereto; provided, that any Company Escrow Party that is not receiving Closing Date Consideration shall not be obligated to execute and deliver the joinder until such Company Escrow Party is entitled to receive any portion of the Earn-Out Consideration or Additional Consideration.

(g) **Debt Payoff Letters.** The holder of the Promissory Notes and any other holders of Indebtedness of the Company as of the Closing Date shall have executed and delivered to Parent Debt Payoff Letters.

(h) **Release of Security Interests.** All security interests in and liens on the assets of the Company shall be terminated and released by any means necessary including the filing of UCC-3 statements.

(i) **Offer Letters.** The employees of the Surviving Company listed on Schedule 6.2(i) shall have countersigned the employment offer letters provided to such employees by Parent.

(j) **Series E Closing.** Parent shall have consummated the sale of shares of its Series E Preferred Stock (the “Series E Closing”).

6.3 **Conditions to the Obligations of the Company to Effect the Merger.** The obligations of the Company to effect the Merger are subject to the satisfaction of the following conditions, any one or more of which may be waived by Company at or prior to the Effective Time:

(a) **Representations, Warranties and Covenants.** The representations and warranties made by Parent and Merger Sub in this Agreement shall have been accurate as of the date of this Agreement and, other than representations and warranties made as of a particular date, shall be accurate in all material respects as of the Closing Date as if made on and as of the Closing Date except for such breaches that, in the aggregate, would not reasonably be expected to have a Material Adverse Effect on the Parent or Merger Sub. Parent and Merger Sub shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by it on or prior to the Effective Time. Parent shall have delivered to Company a certificate from its chief executive officer or chief financial officer, dated the Closing Date, to the foregoing effect.

(b) **Secretary’s Certificate.** Parent shall have delivered a certificate of the Secretary of Parent, dated as of the Closing Date, certifying as to (a) the incumbency of officers of Parent executing documents executed and delivered in connection herewith, (b) the bylaws of Parent, as in effect from the date this Agreement was approved by the Parent Board until the Closing Date and (c) the resolutions of the Parent Board authorizing and approving the applicable matters contemplated hereunder.
ARTICLE VII
INDEMNIFICATION

7.1 Indemnification by Company Escrow Parties.

(a) From and after the Closing and subject to the other terms and conditions of this ARTICLE VII, each of the Company Escrow Parties shall, in the manner contemplated by this ARTICLE VII, indemnify and defend each of the Parent Indemnified Persons against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, such Company Escrow Party’s Pro Rata Share of any and all Damages incurred or sustained by, or imposed upon, the Parent Indemnified Persons based upon, arising out of, with respect to or by reason of:

(i) any inaccuracy or breach by the Company of any representation or warranty made by the Company in this Agreement (disregarding any materiality or Material Adverse Effect or similar qualification);

(ii) any nonfulfillment or breach of any covenant or agreement made by the Company in this Agreement;

(iii) any Transaction Expenses that were not reflected in the Closing Net Working Capital;

(iv) any Indebtedness of the Company as of the close of business on the Closing Date that was not reflected in Payoff Indebtedness or Closing Net Working Capital;

(v) any payments made in respect of Dissenting Shares in excess of the portion of the Merger Consideration otherwise payable in respect of such Dissenting Shares; and

(vi) any inaccuracy in the Spreadsheet.

(b) “Damages” shall mean the amount of any actual Liability, loss, cost, expense, claim, award or judgment incurred or suffered by any Indemnified Person arising out of or resulting from the indemnified matter, whether attributable to personal injury, property damage, Contract claims (including contractual indemnity claims), torts, or otherwise, including reasonable fees and expenses of attorneys.

(c) The indemnity of each Company Escrow Party provided in this Section 7.1 shall be for the benefit of and extend to the Parent Indemnified Persons.

(d) The Parties shall treat, for Tax purposes, any amounts paid under this ARTICLE VII as an adjustment to the Merger Consideration except as otherwise required by Applicable Law.

7.2 Indemnification by Parent.

(a) From and after the Closing and subject to the other terms and conditions of this ARTICLE VII, Parent shall, in the manner contemplated by this ARTICLE VII, indemnify and defend each of the Company Escrow Parties against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for any and all Damages incurred or sustained by, or imposed upon, the Parent Indemnified Persons based upon, arising out of, with respect to or by reason of:

(i) any inaccuracy or breach by Parent of any representation or warranty made by Parent in this Agreement (disregarding any materiality or Material Adverse Effect or similar qualification);

(ii) any nonfulfillment or breach of any covenant or agreement made by Parent in this Agreement.
7.3 Indemnification Actions. All claims for indemnification under this ARTICLE VII shall be asserted and resolved as follows.

(a) For purposes of this ARTICLE VII, the term “Indemnifying Person” when used in connection with particular Damages shall mean the Person or Persons having an obligation to indemnify another Person or Persons with respect to such Damages pursuant to this ARTICLE VII, and the term “Indemnified Person” when used in connection with particular Damages shall mean the Person or Persons having the right to be indemnified with respect to such Damages by another Person or Persons pursuant to this ARTICLE VII.

(b) To make a claim for indemnification, an Indemnified Person shall notify the Indemnifying Person of its claim under this Section 7.3 in writing, including a general description of the basis for such claim (the “Claim Notice”). In the event that the claim for indemnification is based upon a claim by a third Person against the Indemnified Person (a “Third Party Claim”), the Indemnified Person shall provide its Claim Notice promptly after the Indemnified Person’s receipt of the Third Party Claim, and shall enclose a copy of all papers (if any) served with respect to the Third Party Claim; provided, no delay in providing such notice shall affect the obligations of the Indemnifying Person to provide indemnification hereunder except to the extent the Indemnifying Person is materially prejudiced thereby.

(c) In the case of a claim for indemnification based upon a Third Party Claim, the Indemnifying Person shall promptly notify the Indemnified Person whether it will assume the defense of such Third Party Claim under this ARTICLE VII.

(d) If the Indemnifying Person assumes the defense of the Third Party Claim, it shall have the right to defend, at its sole cost and expense, the Third Party Claim. The Indemnifying Person shall have full control of such defense and proceedings. The Indemnified Person may at its own expense participate in, but not control, any defense or settlement of any Third Party Claim controlled by the Indemnifying Person pursuant to this Section 7.3(d); provided, that if in the reasonable opinion of counsel to the Indemnified Person, (A) there are legal defenses available to an Indemnified Person that are different from or additional to those available to the Indemnifying Person, or (B) there exists a conflict of interest between the Indemnifying Person and the Indemnified Person, the Indemnifying Person shall be liable for the reasonable fees and expenses of counsel to the Indemnified Person in each jurisdiction for which the Indemnified Person determines counsel is required. If the Indemnifying Person assumes the defense of the Third Party Claim, the Indemnified Person will not file any papers or consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Person. The Parties will use commercially reasonable efforts to minimize Damages from Third Party Claims and will act in good faith in responding to, defending against, settling or otherwise dealing with such claims. The Parties will also cooperate in any such defense and give each other reasonable access to all information relevant thereto. An Indemnifying Person shall not, without the written consent of the Indemnified Person, consent to the entry of any judgment or enter into any compromise or settlement with respect to the Third Party Claim to the extent such judgment, compromise or settlement provides for any relief other than monetary relief that will be fully paid by the Indemnifying Person.

(e) If the Indemnifying Person notifies the Indemnified Person that it will not, or otherwise does not promptly, assume the defense of the Third Party Claim, then the Indemnifying Person shall have the right to defend against the Third Party Claim (at its sole cost and expense of the Indemnifying Person, if the Indemnified Person is entitled to indemnification hereunder), with counsel of the Indemnified Person’s choosing. Whether or not the Indemnifying Person has assumed the defense of the Third Party Claim, the Indemnifying Person will not be obligated to indemnify the Indemnified Person for any settlement entered into or any judgment that was consented to without the Indemnifying Person’s prior written consent.

(f) In the case of a claim for indemnification not based upon a Third Party Claim, the Indemnifying Person shall have thirty (30) days from its receipt of the Claim Notice to (i) pay such Damages, or (ii) dispute the claim for such Damages.
7.4 Limitation on Actions.

(a) Each of the representations and warranties and covenants contained in this Agreement and in any certificate delivered in connection with this Agreement and the right of an Indemnitee to assert any claim for indemnification pursuant to this ARTICLE VII shall survive the Closing until the first anniversary of the Closing Date (except for the Fundamental Representations, which shall survive for a period of six (6) years after the Closing Date).

(b) Notwithstanding Section 7.4(a), a Party’s rights to indemnification shall not terminate with respect to any claim, whether or not fixed as to liability or liquidated in amount, with respect to which the Indemnified Person has in good faith delivered written notice to the Indemnifying Person, prior to the expiration of the applicable survival period, setting forth the basis for indemnification and the facts upon which the claim for indemnification is based and, if known to the Indemnitee, a reasonable estimate of the Damages relating thereto, without requiring such Party to commence litigation or any other proceeding.

(c) The Company Escrow Parties shall not have any Liability for any indemnification under Section 7.1 unless and until the aggregate Damages for which Claim Notices are delivered by Purchaser in accordance herewith exceed $189,250, in which case the Company Escrow Parties shall have Liability for all Damages for which Claim Notices are delivered by Purchaser in accordance herewith from the first dollar. The foregoing limitations shall not apply in the case of intentional fraud.

(d) Except with respect to claims relating to a breach of the Fundamental Representations, or in the event of intentional fraud, for which the aggregate Damages payable by the Company Escrow Parties will be limited to the amount of the Merger Consideration (less any amount previously paid or to be paid by the Company Escrow Parties pursuant to this ARTICLE VII) and which may be drawn from the Indemnity Escrow Amount or recovered directly from the Company Escrow Parties at Parent’s election, (i) the aggregate Damages payable by the Company Escrow Parties pursuant to Section 7.1 shall be drawn from the Indemnity Escrow Amount, and (ii) the amount of such Damages for which the Company Stockholders are liable under Section 7.1 shall at no time exceed an amount equal to the Escrow Amount at such time.

(e) The aggregate Damages payable by Parent pursuant to this Agreement shall be limited to the amount of the Merger Consideration (less any amount previously payable by Parent).

7.5 Exclusive Remedy. The indemnification provided for in this ARTICLE VII is the sole and exclusive right and remedy available to the Parties with respect to any claim or cause of action based upon, relating to or arising out of this Agreement or otherwise in respect of the transactions contemplated hereby, whether such claim or cause of action arises out of any contract, tort or other common law theory or otherwise; provided, however, that nothing herein will limit any such Party’s remedies in respect of intentional fraud by the other Party in connection with this Agreement.

ARTICLE VIII
TAX MATTERS

The following provisions shall govern the allocation of responsibility as between Parent and the Company Escrow Parties for certain tax matters following the Closing Date:

8.1 Tax Periods Ending on or Before the Closing Date. Parent shall prepare or cause to be prepared and file or cause to be filed all income Tax Returns for the Company for all periods ending on or prior to the Closing Date which are filed after the Closing Date. Parent shall provide the Stockholder Representative the opportunity to review and comment on each such income Tax Return described in the preceding sentence prior to filing and shall make such revisions to such income Tax Returns as are reasonably requested by the Stockholder Representative.
8.2 **Tax Periods Beginning Before and Ending After the Closing Date.** Parent shall prepare or cause to be prepared and file or cause to be filed any income Tax Returns of the Company for income Tax periods which begin before the Closing Date and end after the Closing Date.

8.3 **Tax Sharing Agreements.** All tax sharing agreements or similar agreements with respect to or involving the Company shall be terminated as of the Closing Date and, after the Closing Date, the Company shall not be bound thereby or have any liability thereunder.

8.4 **Retention of Records.** For a period of three years following the Effective Time, Parent shall retain the Surviving Company’s records and information which are reasonably related to the Company’s Tax Returns.

**ARTICLE IX**

**TERMINATION**

9.1 **Termination.** This Agreement may be terminated at any time prior to the Effective Time, whether before or after the Stockholders of the Company adopt this Agreement:

(a) by the mutual written consent of Parent and the Company;

(b) by Parent or the Company, if the Closing has not occurred on or prior to June 1, 2018; provided, however: (i) a Party shall not have the right to terminate this Agreement under this Section 9.1(b) if the Closing has failed to occur because such Party has failed to perform or observe in any material respect its covenants and agreements hereunder; and (ii) provided that Company has not failed to perform or observe in any material respect its covenants and agreements hereunder, Company shall be entitled to an increase to the Closing Date Consideration in the amount of $12,000 per diem for every day the Closing extends beyond the later of (A) the date that the Company has satisfied all of the conditions set forth in Article VI, and any Parent review period with respect to the Disclosure Schedule Update and review of supplemental due diligence related thereto has expired; and (B) April 16, 2018.

(c) by the Company, if Parent or Merger Sub shall have breached any of their respective representations, warranties, covenants or other agreements contained in this Agreement, such that any conditions set forth in Section 6.3(a) would not be satisfied; provided that if such breach is curable within 30 days after the giving of written notice to Parent or Merger Sub, then the Company may not terminate this Agreement unless such breach remains uncured at the expiration of such 30-day period;

(d) by Parent, if the Company shall have breached any of its representations, warranties, covenants or other agreements contained in this Agreement, such that any conditions set forth in Section 6.2(a) would not be satisfied; provided that if such breach is curable within 30 days after the giving of written notice to Parent or Merger Sub, then the Parent may not terminate this Agreement unless such breach remains uncured at the expiration of such 30-day period;

(e) by Parent, if Merger Consents constituting the Stockholder Requisite Consent are not delivered to Parent within two Business Days following the execution and delivery of this Agreement;

(f) by Parent, in accordance with Section 5.11; and

(g) by Parent, if Parent determines not to complete the Series E Closing.

9.2 **Effect of Termination.** In the event of the termination of this Agreement pursuant to Section 9.1 hereof, this Agreement shall forthwith become null and void and have no effect, without liability on the part of Parent, Merger Sub or the Company and their respective directors, officers or shareholders, except that (a) the provisions
of Section 5.7 and this Article 9 shall survive, and (b) except as set forth in Section 9.3, no such termination shall relieve any party from liability by reason of any intentional fraud or willful and intentional breach by such party of any of its representations, warranties, covenants or other agreements contained in this Agreement.

9.3 Breakage Fee.

(a) In the event that this Agreement is terminated by the Company pursuant to Sections 9.1(b) or 9.1(c), or this Agreement is terminated by Parent pursuant to Section 9.1(g), Parent shall pay the Company $1,500,000 (the “Breakage Fee”) as promptly as reasonably practicable (and, in any event, within two (2) Business Days following such termination).

(b) Each of the Parties expressly acknowledges and agrees that, with respect to any termination of this Agreement under circumstances in which the Breakage Fee is payable pursuant to Section 9.3(a), payment of the Breakage Fee shall constitute liquidated damages with respect to any claim for damages or any other claim which the Company would otherwise be entitled to assert against Parent with respect to any such termination of this Agreement, and shall constitute the sole and exclusive remedy of the Company, the Company Stockholders, or any other Person against Parent and the former, current and future equity holders, controlling persons, directors, officers, employees, agents, and Affiliates of Parent for any loss suffered as a result of any breach of any covenant or agreement or the failure of the transactions contemplated herein to be consummated. The Parties expressly acknowledge and agree that, in light of the difficulty of accurately determining actual damages with respect to the foregoing upon any such termination of this Agreement under circumstances in which the Breakage Fee is payable pursuant to Section 9.3(a), the right to such payment: (i) constitutes a reasonable estimate of the damages that will be suffered by reason of any such termination of this Agreement, and (ii) shall be in full and complete satisfaction of any and all damages arising as a result of any such termination of this Agreement.

ARTICLE X
GENERAL PROVISIONS

10.1 Notices. All notices, demands and other communications hereunder shall be in writing (including electronic mail (e-mail) transmission, so long as receipt of such e-mail is requested and received), and shall be deemed to have been duly given if delivered personally or by overnight courier or if mailed by certified mail, return receipt requested, postage prepaid, as follows (or to such other address as a Party may have specified by notice given to the other Party pursuant to this provision:

(a) if to Parent or Merger Sub, to:
   Livongo Healthcare, Inc.
   With a copy to:
   Morgan, Lewis & Bockius LLP

(b) if to the Company, to:
   Retrofit Inc.
   With a copy to:
   Stinson Leonard Street LLP

10.2 Captions. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

10.3 Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts, and any Party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to
be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Agreement shall become effective when each Party hereto shall have received a counterpart hereof signed by the other Parties hereto. The Parties agree that the delivery of this Agreement may be effected by means of an exchange of facsimile or portable document format signatures with original copies to follow by mail or courier service.

10.4 Entire Agreement. This Agreement and the documents, instruments and other agreements specifically referred to herein or delivered pursuant hereto set forth the entire understanding of the Parties hereto with respect to the transactions contemplated hereby. All exhibits and schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement. Any and all previous agreements and understandings between or among the Parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

10.5 Amendments and Waivers.

(a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each Party to this Agreement, or in the case of a waiver, by the Party against whom the waiver is to be effective.

(b) No failure or delay by any Party in exercising any right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(c) To the maximum extent permitted by law, (i) no waiver that may be given by a Party shall be applicable except in the specific instance for which it was given, and (ii) no notice to or demand on one Party shall be deemed to be a waiver of any obligation of such Party or the right of the Party giving such notice or demand to take further action without notice or demand.

10.6 Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other Persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

10.7 Governing Law. This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based upon contact, tort or any other theory), including all matters of construction, validity and performance, shall be governed by and interpreted and enforced in accordance with the laws of the State of Delaware, without giving effect to any choice of law or conflict of laws rules or provisions (whether of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than Delaware.

10.8 Successors and Assigns. This Agreement may not be assigned by any Party hereto without the prior written consent of the other Party; provided, that Parent shall have the right to freely assign, at any time, to one or more of its Affiliates, all or any portion of Parent’s rights under this Agreement or any of the Related Agreements, but no such assignment will relieve Parent from any of its obligations under this Agreement. Subject to the foregoing, all of the terms and provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective executors, heirs, personal representatives, successors and assigns. Any purported assignment not permitted under this Section 10.8 shall be null and void.
10.9 **Stockholder Representative.**

(a) The Stockholder Representative will be designated by Regence Blue Shield and shall initially be Ryan Gillooly. The Stockholder Representative is hereby designated to serve as the representative of each Company Escrow Party with respect to the matters set forth in this Agreement and the Related Agreements to be performed by the Stockholder Representative. Each Company Escrow Party hereby irrevocably appoints the Stockholder Representative as agent and attorney-in-fact for each such Company Escrow Party, for and on behalf of each such Company Escrow Party, with full power and authority to represent each Company Escrow Party and such Company Escrow Party’s successors and assigns with respect to all matters arising under this Agreement and all actions taken by the Stockholder Representative under this Agreement will be binding upon each such Company Escrow Party and such Company Escrow Party’s successors and assigns as if expressly ratified and confirmed in writing by each of them. Without limiting the generality of the foregoing, the Stockholder Representative has full power and authority, on behalf of each Company Escrow Party and such Company Escrow Party’s successors and assigns, to interpret the terms and provisions of this Agreement, to dispute or fail to dispute any claim for indemnification under this Agreement, to negotiate and compromise any dispute that may arise under this Agreement and to sign any releases or other documents with respect to any such dispute. A Company Escrow Party will be deemed a party or a signatory to any agreement, document, instrument or certificate for which the Stockholder Representative signs on behalf of such Company Escrow Party.

(b) Neither the Stockholder Representative nor any agent employed by it shall incur any liability to any Company Escrow Party relating to the performance of its duties hereunder or any of its omissions or actions with respect thereto.

(c) Subject to applicable law and professional standards of conduct, Parent, Merger Sub, Company and the Surviving Company each hereby consent to allow the Stockholder Representative, as the representative of the Company Stockholders, to use Stinson Leonard Street LLP (the “Firm”) in connection with any dispute arising out of, or interpretation of, this Agreement or any other document or agreement contemplated herein. Parent, Merger Sub, Company and the Surviving Company recognize that the Firm has been providing advice to the Stockholder Representative, Company, the Company Stockholders, and their directors, officers, shareholders, accounting firm, and/or employees, and Parent, Merger Sub, Company and the Surviving Company agree that all pre-Closing communications between the Company and the Firm made in connection with the negotiation, preparation, execution, delivery and Closing under this Agreement, shall continue after the Closing and for all purposes be deemed to be privileged communications between the Stockholder Representative and such counsel.

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PARENT:
LIVONGO HEALTH, INC.
By: /s/ Andrew Page
Name: Andrew Page
Title: President and Chief Financial Officer

MERGER SUB:
RAISIN MERGER SUB, INC.
By: /s/ Erica Palsis
Name: Erica Palsis
Title: Secretary
IN WITNESS WHEREOF, this Agreement has been signed by each of the Parties hereto on the date first written above.

COMPANY:

RETROFIT, INC.

By: /s/ Mary Pigatti
Name: Mary Pigatti
Title: Chief Executive Officer

Regence BlueShield, as the Stockholder
Representative:

By: /s/ Ryan Gillooly
Name: Ryan Gillooly

Signature Page to Agreement and Plan of Merger
Livongo Health, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “General Corporation Law”),

DOES HEREBY CERTIFY:

1. That the name of this corporation is Livongo Health, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on October 16, 2008 under the name EosHealth, Inc.

2. That the Board of Directors duly adopted resolutions proposing to amend and restate the Fourth Amended and Restated Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Fourth Amended and Restated Certificate of Incorporation (as amended) of this corporation be amended and restated in its entirety to read as follows (and any references to the “Certificate of Incorporation” hereinafter shall be deemed to refer to this Fifth Amended and Restated Certificate of Incorporation unless the context otherwise requires):

FIRST: The name of this corporation is Livongo Health, Inc. (the “Corporation”).

SECOND: The address of the registered office of the Corporation in the State of Delaware is 850 New Burton Road Suite 201, Dover, County of Kent, 19904. The name of its registered agent at such address is National Corporate Research, Ltd.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 202,000,000 shares of Common Stock, $0.001 par value per share (“Common Stock”) and (ii) 117,231,018 shares of Preferred Stock, $0.001 par value per share (“Preferred Stock”), of which 20,788,612 shares are hereby designated “Series A Preferred Stock”, 17,869,906 shares are hereby designated “Series B Preferred Stock”, 29,713,664 shares are hereby designated “Series C Preferred Stock”, 23,547,874 shares are hereby designated “Series D Preferred Stock” and 25,310,962 shares are hereby designated “Series E Preferred Stock”.

Exhibit 3.1
The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Certificate of Incorporation or pursuant to the General Corporation Law. There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the aggregate number of shares thereof then outstanding or otherwise issuable upon exercise or conversion, as applicable, of then outstanding stock Options (as defined below), Preferred Stock or other Convertible Securities (as defined below)) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

B. PREFERRED STOCK

The rights, preferences, powers, privileges and restrictions, qualifications and limitations of the Preferred Stock are as set forth below. Unless otherwise indicated, references to “sections” or “subsections” in this Part B of this Article Fourth refer to sections and subsections of Part B of this Article Fourth.

1. Dividends. Dividends at a rate per annum of (a) $0.040984 per share shall accrue on shares of Series A Preferred Stock, (b) $0.0912 per share shall accrue on shares of Series B Preferred Stock, (c) $0.1333 per share shall accrue on shares of Series C Preferred Stock, (d) $0.1784 per share shall accrue on shares of Series D Preferred Stock and (e) $0.3319 per share shall accrue on shares of Series E Preferred Stock (in each case subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Preferred Stock) (the “Preferred Dividends”) when, as and if declared by the Corporation’s Board of Directors. Preferred Dividends shall be non-cumulative and except as set forth in the following sentence of this Section 1 or in Subsection 2.1, such...
Preferred Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to declare such Preferred Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in the Certificate of Incorporation) the holders of the Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Preferred Stock in an amount at least equal to the sum of (i) the amount of the aggregate Preferred Dividends then declared on such share of Preferred Stock and not previously paid and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Preferred Stock determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the Applicable Original Issue Price (as defined below); provided that if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Preferred Dividend.

The “Series A Original Issue Price” shall mean $0.5123 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock. The “Series B Original Issue Price” shall mean $1.1192 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock. The “Series C Original Issue Price” shall mean $1.6659 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock. The “Series D Original Issue Price” shall mean $2.2295 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series D Preferred Stock. The “Series E Original Issue Price” shall mean $4.1484 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series E Preferred Stock.

“Applicable Original Issue Price” shall mean the Series A Original Issue Price, the Series B Original Issue Price, the Series C Original Issue Price, the Series D Original Issue Price or the Series E Original Issue Price, as applicable.
2.1 Preferential Payments to Holders of Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the holders of shares of Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to:

2.1.1 In respect of the Series A Preferred Stock, the greater of (i) the Applicable Original Issue Price, plus any Preferred Dividends declared but unpaid thereon, together with any other dividends declared but unpaid thereon, and (ii) such amount per share as would have been payable had all shares of Series A Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “Series A Liquidation Amount”);

2.1.2 In respect of the Series B Preferred Stock, the greater of (i) the Applicable Original Issue Price, plus any Preferred Dividends declared but unpaid thereon, together with any other dividends declared but unpaid thereon, and (ii) such amount per share as would have been payable had all shares of Series B Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “Series B Liquidation Amount”);

2.1.3 In respect of the Series C Preferred Stock, the greater of (i) the Applicable Original Issue Price, plus any Preferred Dividends declared but unpaid thereon, together with any other dividends declared but unpaid thereon, and (ii) such amount per share as would have been payable had all shares of Series C Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “Series C Liquidation Amount”);

2.1.4 In respect of the Series D Preferred Stock, the greater of (i) the Applicable Original Issue Price, plus any Preferred Dividends declared but unpaid thereon, together with any other dividends declared but unpaid thereon, and (ii) such amount per share as would have been payable had all shares of Series D Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “Series D Liquidation Amount”); and

2.1.5 In respect of the Series E Preferred Stock, the greater of (i) the Applicable Original Issue Price, plus any Preferred Dividends declared but unpaid thereon, together with any other dividends declared but unpaid thereon, and (ii) such amount per share as would have been payable had all shares of Series E Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “Series E Liquidation Amount”).
If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1, the holders of shares of Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, after the payment of all preferential amounts required to be paid to the holders of shares of Preferred Stock pursuant to Subsection 2.1, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares of Common Stock held by each such holder.

2.3 Deemed Liquidation Events.

2.3.1 Definition. Each of the following events shall be considered a "Deemed Liquidation Event" unless each of the Series B/C/D/E Requisite Investors (as defined below), the Series A Requisite Investors (as defined below) and the Common Requisite Investors (as defined below) elect otherwise by written notice sent to the Corporation at least five (5) days prior to the effective date of any such event:

(a) a merger or consolidation in which
   (i) the Corporation is a constituent party or
   (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation (provided that, for the purpose of this Subsection 2.3.1, all shares of Common Stock issuable upon exercise of vested Options (as defined below) outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged, subject to Sections 2.1 and 2.2),
except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation, or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation. The “Series A Requisite Investors” shall mean the holders of a majority of the outstanding shares of Series A Preferred Stock, voting as a separate series. The “Series B Requisite Investors” shall mean the holders of a majority of the outstanding shares of Series B Preferred Stock, voting as a separate series. The “Series C Requisite Investors” shall mean the holders of a majority of the outstanding shares of Series C Preferred Stock, voting as a separate series, which majority must include the written consent or affirmative vote of at least one Major Series C Investor if at the time of such written consent or vote there is a Major Series C Investor. A “Major Series C Investor” is a stockholder of the Corporation who did not, and whose affiliates did not, hold any shares of the Corporation’s capital stock prior to April 7, 2016 and who, together with its affiliates, holds at least 2,400,000 shares of Series C Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class). The “Series D Requisite Investors” shall mean the holders of a majority of the outstanding shares of Series D Preferred Stock, voting as a separate series. The “Series E Requisite Investors” shall mean the holders of a majority of the outstanding shares of Series E Preferred Stock, voting as a separate series. The “Common Requisite Investors” shall mean the holders of a majority of the outstanding shares of Common Stock then held by all Major Common Investors, excluding shares of Common Stock issued or issuable upon conversion of Preferred Stock, voting together as a separate class. The “Major Common Investors” shall mean each stockholder of the Corporation holding at least 8,000,000 shares of Common Stock, excluding shares of Common Stock issued or issuable upon conversion of Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class).

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2.3.2 Effecting a Deemed Liquidation Event

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(ii) unless the agreement or plan of merger or consolidation for such transaction (the “Merger Agreement”) provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2.

(b) In the event of a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(ii) or 2.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law or otherwise distribute the consideration received by the Corporation for such Deemed Liquidation Event in accordance with Subsections 2.1 and 2.2 above within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Preferred Stock, and (ii) if the Series A Requisite Investors and the Series B/C/D/E Requisite Investors so request in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders (the “Available Proceeds”), to the extent legally available therefor, on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, to redeem all outstanding shares of (i) Series E Preferred Stock at a price per share equal to the Series E Liquidation Amount, (ii) Series D Preferred Stock at a price per share equal to the Series D Liquidation Amount, (iii) Series C Preferred Stock at a price per share equal to the Series C Liquidation Amount, (iv) Series B Preferred Stock at a price per share equal to the Series B Liquidation Amount and (v) Series A Preferred Stock at a price per share equal to the Series A Liquidation Amount, or, if greater than the amounts contemplated by the preceding clauses (i), (ii), (iii), (iv) or (v), as applicable, the amount payable on the Preferred Stock pursuant to Subsection 2.2. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, the Corporation shall first ratably redeem each holder’s shares of Preferred Stock to the fullest extent of such Available Proceeds, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. The applicable provisions of Section 6 shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of Preferred Stock pursuant to this Subsection 2.3.2(b). Prior to the distribution or redemption provided for in this Subsection 2.3.2(b) the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except in accordance with Subsections 2.1 and 2.2 above or to discharge expenses incurred in connection with such Deemed Liquidation Event.
2.3.3 Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation, which approval shall include at least one (1) Preferred Director (as defined below).

2.3.4 Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to Subsection 2.3.1(a)(i) if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the “Additional Consideration”), the Merger Agreement shall provide that: (a) the portion of such consideration that is not Additional Consideration (such portion, the “Initial Consideration”) shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 2.3.4, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.


3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class.

3.2 Election of Directors. The holders of record of the shares of (a) Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the “Series A Director”), (b) Series B Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the “Series B Director”), (c) Series C Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the “Series C Director”) and (d) Series E Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the “Series E Director” and together with the Series A Director, the Series B Director and the Series C Director, the “Preferred Directors”). The Series A Director, the Series B Director, the Series C Director or the Series E Director may be removed without cause by, and only by, the affirmative vote of the holders of a majority of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock or the Series E Preferred Stock, respectively, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of such stockholders. If the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or the Series E Preferred
Stock fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors pursuant to the first sentence of this Subsection 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or the Series E Preferred Stock, respectively, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or the Series E Preferred Stock, respectively. The holders of record of the shares of Common Stock and Preferred Stock, voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Subsection 3.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3.2.

3.3 Protective Provisions.

3.3.1 At any time when shares of Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following (the "Prohibited Actions") without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the Preferred Requisite Investors (which Preferred Requisite Investors, prior to the one-year anniversary of the Filing Date (as defined below) only and with respect to subsections (a) and (f) below only, must include the Series E Requisite Investors), given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(a) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or consent to any of the foregoing;

(b) amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation;

(c) create, or authorize the creation of, or issue, or authorize the issuance of any debt or debt security, or permit any subsidiary to take any such action with respect to any debt or debt security, if the aggregate indebtedness of the Corporation and its subsidiaries for borrowed money following such action would exceed $1,000,000;

(d) create, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Corporation, or sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Corporation, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary;
(e) create, or authorize the creation of, or issue or obligate itself to issue shares of any additional class or series of capital stock unless the same ranks junior to the Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption, or increase the authorized number of shares of any additional class or series of capital stock unless the same ranks junior to the Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption;

(f) increase the number of shares reserved for the Corporation’s 2008 Stock Incentive Plan, as amended, and the Corporation’s 2014 Stock Incentive Plan (collectively, the “Plans”), or any other plan, agreement, or arrangement providing for the issuance of shares of the Corporation’s capital stock or Options (as defined below), or create, adopt or implement a new equity incentive or employee compensation plan, or amend the vesting schedules of any stock option or restricted stock agreements evidencing grants or awards regardless of whether such grants or awards of Options, shares of the Corporation’s capital stock or other equity incentive were made pursuant to such plans;

(g) increase or decrease the authorized number of directors constituting the Board of Directors; or

(h) create any obligations to an employee, officer or director of the Corporation (each, a “Related Party”) or member of such Related Party’s immediate family, or any corporation, partnership or other entity in which such Related Party is an officer, director or partner, or in which such Related Party has a greater than 50% ownership interest or otherwise controls, except for obligations to employees, officers, employees, directors and consultants arising in the ordinary course of business.

3.3.2 At any time when shares of Series E Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following (the “Series E Prohibited Actions”) without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the Series E Requisite Investors, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(a) amend, alter, repeal or waive any provision of the Certificate of Incorporation or Bylaws of the Corporation if such amendment, alteration, repeal or waiver would adversely alter or change any anti-dilution protections accorded the Series E Preferred Stock or any power, preference or right of the Series E Preferred Stock in a manner disproportionate to any other class or series of Preferred Stock;
(b) increase or decrease the authorized number of shares of Series E Preferred Stock;

(c) (i) reclassify, alter or amend any existing security of the Corporation that is pari passu with the Series E Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series E Preferred Stock in respect of any such right, preference, or privilege or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Series E Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or pari passu with the Series E Preferred Stock in respect of any such right, preference or privilege; or

(d) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof.

3.3.3 At any time when shares of Series D Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following (the “Series D Prohibited Actions”) without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the Series D Requisite Investors, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(a) amend, alter, repeal or waive any provision of the Certificate of Incorporation or Bylaws of the Corporation if such amendment, alteration, repeal or waiver would adversely alter or change any anti-dilution protections accorded the Series D Preferred Stock or any power, preference or right of the Series D Preferred Stock in a manner disproportionate to any other class or series of Preferred Stock;

(b) increase or decrease the authorized number of shares of Series D Preferred Stock;

(c) (i) reclassify, alter or amend any existing security of the Corporation that is pari passu with the Series D Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render
such other security senior to the Series D Preferred Stock in respect of any such right, preference, or privilege or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Series D Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or pari passu with the Series D Preferred Stock in respect of any such right, preference or privilege; or

(d) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof.

3.3.4 At any time when shares of Series C Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following (the “Series C Prohibited Actions”) without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the Series C Requisite Investors, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(a) amend, alter, repeal or waive any provision of the Certificate of Incorporation or Bylaws of the Corporation if such amendment, alteration, repeal or waiver would adversely alter or change any anti-dilution protections accorded the Series C Preferred Stock or any power, preference or right of the Series C Preferred Stock in a manner disproportionate to any other class or series of Preferred Stock;

(b) increase or decrease the authorized number of shares of Series C Preferred Stock;

(c) (i) reclassify, alter or amend any existing security of the Corporation that is pari passu with the Series C Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series C Preferred Stock in respect of any such right, preference, or privilege or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Series C Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or pari passu with the Series C Preferred Stock in respect of any such right, preference or privilege; or
3.3.5 At any time when shares of Series B Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following (the “Series B Prohibited Actions”) without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the Series B Requisite Investors, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(a) amend, alter, repeal or waive any provision of the Certificate of Incorporation or Bylaws of the Corporation if such amendment, alteration, repeal or waiver would adversely alter or change any anti-dilution protections accorded the Series B Preferred Stock or any power, preference or right of the Series B Preferred Stock in a manner disproportionate to any other class or series of Preferred Stock;

(b) increase or decrease the authorized number of shares of Series B Preferred Stock;

(c) (i) reclassify, alter or amend any existing security of the Corporation that is pari passu with the Series B Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series B Preferred Stock in respect of any such right, preference, or privilege or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Series B Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or pari passu with the Series B Preferred Stock in respect of any such right, preference or privilege; or

(d) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof.
3.3.6 At any time when shares of Series A Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following (the “Series A Prohibited Actions”) without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the Series A Requisite Investors, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(a) amend, alter, repeal or waive any provision of the Certificate of Incorporation or Bylaws of the Corporation if such amendment, alteration, repeal or waiver would adversely alter or change any anti-dilution protections accorded the Series A Preferred Stock or any power, preference or right of the Series A Preferred Stock in a manner disproportionate to any other class or series of Preferred Stock;

(b) increase or decrease the authorized number of shares of Series A Preferred Stock;

(c) (i) reclassify, alter or amend any existing security of the Corporation that is pari passu with the Series A Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series A Preferred Stock in respect of any such right, preference or privilege or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Series A Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or pari passu with the Series A Preferred Stock in respect of any such right, preference or privilege; or

(d) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof.

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4. Optional Conversion

The holders of Preferred Stock shall have conversion rights as follows (the “Conversion Rights”):

4.1 Right to Convert.

4.1.1 Conversion Ratio. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Applicable Original Issue Price by the Applicable Conversion Price (as defined below) in effect at the time of conversion. The “Series A Conversion Price” shall initially be equal to $0.5123. The “Series B Conversion Price” shall initially be equal to $1.1192. The “Series C Conversion Price” shall initially be equal to $1.6659. The “Series D Conversion Price” shall initially be equal to $2.2295. The “Series E Conversion Price” shall initially be equal to $4.1484. The “Applicable Conversion Price” shall mean the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price, the Series D Conversion Price or the Series E Conversion Price, as applicable. The Applicable Conversion Price, and the rate at which shares of the Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

4.1.2 Termination of Conversion Rights. In the event of a notice of redemption of any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock pursuant to Section 6, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not fully paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall (a) provide written notice to the Corporation’s transfer agent at the office of the transfer agent for the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock or Series E Preferred Stock, as applicable, (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) that such holder elects to convert all or any number of such holder’s shares of Preferred Stock and, if applicable, any event on which such conversion is contingent and (b), if such holder’s shares are certificated,
surrender the certificate or certificates for such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as applicable, (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify (but without the necessity to post any bond) the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as applicable (or at the principal office of the Corporation if the Corporation serves as its own transfer agent). Such notice shall state such holder’s name or the names of the nominees in which such holder wishes the shares of Common Stock to be issued. If required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such notice and, if applicable, certificates (or lost certificate affidavit and agreement) shall be the time of conversion (the “Conversion Time”), and the shares of Common Stock issuable upon conversion of the specified shares shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time (i) issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Preferred Stock converted.

4.3.2 Reservation of Shares. The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Applicable Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as applicable, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Conversion Price.
4.3.3 **Effect of Conversion.** All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in **Subsection 4.2** and to receive payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

4.3.4 **No Further Adjustment.** Upon any such conversion, no adjustment to the Applicable Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

4.3.5 **Taxes.** The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this **Section 4.** The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

4.4 **Adjustments to the Applicable Conversion Price for Diluting Issues.**

4.4.1 **Special Definitions.** For purposes of this Article Fourth, the following definitions shall apply:

(a) “**Option**” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(b) “**Series A Original Issue Date**” shall mean the date on which the first share of Series A Preferred Stock was issued.

(c) “**Series B Original Issue Date**” shall mean the date on which the first share of Series B Preferred Stock was issued.

(d) “**Series C Original Issue Date**” shall mean the date on which the first share of Series C Preferred Stock is issued.

(e) “**Series D Original Issue Date**” shall mean the date on which the first share of Series D Preferred Stock is issued.

(f) “**Series E Original Issue Date**” shall mean the date on which the first share of Series E Preferred Stock is issued.
(g) "Applicable Original Issue Date" shall mean the Series A Original Issue Date, the Series B Original Issue Date, the Series C Original Issue Date or the Series D Original Issue Date, as applicable.

(h) "Filing Date" shall mean the filing date of this Certificate of Incorporation.

(i) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(j) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 4.4.3 below, deemed to be issued) by the Corporation after the Filing Date, other than (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, "Exempted Securities"):

(i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as applicable;

(ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4.5, 4.6, 4.7 or 4.8;

(iii) up to 52,194,883 shares of Common Stock, including Options therefor (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to the Plans of the Corporation, whether issued before or after the Filing Date (provided that any Options for such shares that expire or terminate unexercised or any restricted stock repurchased by the Corporation at cost shall not be counted toward such maximum number unless and until such shares are re-granted as new stock grants (or as new Options) pursuant to the terms of any such plan, agreement or arrangement;
(iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(v) shares of Common Stock issued upon the conversion of Preferred Stock pursuant to a Qualified Public Offering;

(vi) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation, including at least three (3) Preferred Directors;

(vii) shares of Common Stock, Options or Convertible Securities issued pursuant to the acquisition of another corporation by the Corporation by merger, purchase of all or substantially all of the assets or other reorganization or to a joint venture agreement, provided that such issuances are approved by the Board of Directors of the Corporation, including at least three (3) Preferred Directors; or

(viii) shares of Common Stock, Options or Convertible Securities issued in connection with sponsored research, collaboration, technology license, development or other similar agreements or strategic partnerships approved by the Board of Directors of the Corporation, including at least three (3) Preferred Directors.
4.4.2 No Adjustment of Applicable Conversion Price. No adjustment in the Series A Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the Series A Requisite Investors agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock. No adjustment in the Series B Conversion Price, the Series C Conversion Price, the Series D Conversion Price or the Series E Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the Series B/C/D/E Requisite Investors agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3 Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Filing Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Applicable Conversion Price pursuant to the terms of Subsection 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, such Applicable Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Applicable Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the Applicable Conversion Price to an amount which exceeds the lower of (i) such Applicable Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) such Applicable Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.
(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Applicable Conversion Price pursuant to the terms of Subsection 4.4.4 (either because the consideration per share (determined pursuant to Subsection 4.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than such Applicable Conversion Price then in effect, or because such Option or Convertible Security was issued before the Applicable Original Issue Date), are revised after the Applicable Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4.4.3(a)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Applicable Conversion Price pursuant to the terms of Subsection 4.4.4, such Applicable Conversion Price shall be readjusted to such Applicable Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Applicable Conversion Price provided for in this Subsection 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection 4.4.3). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Applicable Conversion Price that would result under the terms of this Subsection 4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to such Applicable Conversion Price that such issuance or amendment took place at the time such calculation can first be made.
4.4.4 Adjustment of Applicable Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Filing Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4.4.3) without consideration or for a consideration per share less than the Applicable Conversion Price in effect immediately prior to such issue, then such Applicable Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

\[ CP_2 = CP_1 \times \frac{A + B}{A + C}. \]

For purposes of the foregoing formula, the following definitions shall apply:

(a) “CP2” shall mean such Applicable Conversion Price in effect immediately after such issue of Additional Shares of Common Stock;

(b) “CP1” shall mean such Applicable Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(c) “A” shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(d) “B” shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CPI (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CPI); and

(e) “C” shall mean the number of such Additional Shares of Common Stock issued in such transaction.

4.4.5 Determination of Consideration. For purposes of this Subsection 4.4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property: Such consideration shall:

(i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation, including at least one (1) Preferred Director; and

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(iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation, including at least one (1) Preferred Director.

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:

(i) The total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.
4.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Applicable Conversion Price pursuant to the terms of Subsection 4.4.4 and such issuance dates occur within a period of no more than ninety (90) days from the first such issuance to the final such issuance, then, upon the final such issuance, such Applicable Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Filing Date effect a subdivision of the outstanding Common Stock, the Applicable Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Filing Date combine the outstanding shares of Common Stock, the Applicable Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Filing Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Applicable Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Applicable Conversion Price then in effect by a fraction:

\[
\frac{1}{\text{Numerator}} = \begin{cases} 
\text{total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and} \\
\text{denominator} = \text{total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.}
\end{cases}
\]

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Notwithstanding the foregoing (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Applicable Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter such Applicable Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) no such adjustment shall be made if the holders of Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

4.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Filing Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation, including at least one (1) Preferred Director) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Preferred Stock. For the avoidance of doubt, nothing in this Subsection 4.8 shall be construed as preventing the holders of Preferred Stock from seeking any appraisal rights to which they are otherwise entitled under the DGCL in connection with a merger triggering an adjustment hereunder, nor shall this Subsection 4.8 be deemed conclusive evidence of the fair value of the shares of Preferred Stock in any such appraisal proceeding.
4.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Applicable Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Preferred Stock (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Applicable Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Preferred Stock.

4.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Stock and the Common Stock. Such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

5.1 Trigger Events. Upon either (a) the closing of the sale of shares of Common Stock to the public at a price of at least $4.4590 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least $50,000,000 of gross proceeds to the Corporation (the “Qualified
Public Offering or (b) (1) with respect to the Series A Preferred Stock, the date and time, or the occurrence of an event, specified by vote or written consent of the Series A Requisite Investors, (2) with respect to the Series B Preferred Stock, the date and time, or the occurrence of an event, specified by vote or written consent of the Series B Requisite Investors, (3) with respect to the Series C Preferred Stock, the date and time, or the occurrence of an event, specified by vote or written consent of the Series C Requisite Investors, (4) with respect to the Series D Preferred Stock, the date and time, or the occurrence of an event, specified by vote or written consent of the Series D Requisite Investors or (5) with respect to the Series E Preferred Stock, the date and time, or the occurrence of an event, specified by vote or written consent of the Series E Requisite Investors (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the “Mandatory Conversion Time”), then (i) all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock, in each case, as applicable, shall automatically be converted into shares of Common Stock, at the then effective conversion rate as calculated pursuant to Subsection 4.1.1 and (ii) such shares may not be reissued by the Corporation.

5.2 Procedural Requirements. All holders of record of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as applicable, shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as applicable, pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as applicable, in certificated form shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify (but without the necessity to post any bond) the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to Subsection 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender any certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of any certificate or certificates of such holders (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Subsection 5.2. Notwithstanding the foregoing, all certificates evidencing shares of Preferred Stock that are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Time, be deemed to have been retired and cancelled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. As soon as practicable after the Mandatory Conversion Time and, if
applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock, the Corporation shall (a) issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and (b) pay cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Preferred Stock converted. Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

6. Redemption.

6.1 General. Unless prohibited by Delaware law governing distributions to stockholders, shares of Preferred Stock shall be redeemed by the Corporation at a price equal to the Applicable Original Issue Price per share, plus all declared but unpaid dividends thereon (the “Redemption Price”), in three (3) annual installments commencing not more than sixty (60) days after receipt by the Corporation at any time on or after April 10, 2023, of written notice from the Preferred Requisite Investors requesting redemption of all shares of Preferred Stock (the “Redemption Request”). Upon receipt of a Redemption Request, the Corporation shall apply all of its assets to any such redemption, and to no other corporate purpose, except to the extent prohibited by Delaware law governing distributions to stockholders. The date of each such installment shall be referred to as a “Redemption Date.” On each Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Preferred Stock owned by each holder, that number of outstanding shares of Preferred Stock determined by dividing (i) the total number of shares of Preferred Stock outstanding as of immediately prior to such Redemption Date by (ii) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies); provided, however, that Excluded Shares (as such term is defined in Subsection 6.2) shall not be redeemed and shall be excluded from the calculations set forth in this sentence. If on any Redemption Date, Delaware law governing distributions to stockholders prevents the Corporation from redeeming all shares of Preferred Stock to be redeemed, the Corporation shall ratably redeem the maximum number of shares that it may redeem consistent with such law, and shall redeem the remaining shares as soon as it may lawfully do so under such law.

6.2 Redemption Notice. The Corporation shall send written notice of the mandatory redemption (the “Redemption Notice”) to each holder of record of Preferred Stock not less than forty (40) days prior to each Redemption Date. Each Redemption Notice shall state:

(a) the number of shares of Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

(b) the Redemption Date and the Redemption Price;
(c) the date upon which the holder’s right to convert such shares terminates (as determined in accordance with Subsection 4.1); and

(d) for holders of shares in certificated form, that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Preferred Stock to be redeemed.

If the Corporation receives, on or prior to the twentieth (20th) day after the date of delivery of the Redemption Notice to a holder of Preferred Stock, written notice from such holder that such holder elects to be excluded from the redemption provided in this Section 6, then the shares of Preferred Stock registered on the books of the Corporation in the name of such holder at the time of the Corporation’s receipt of such notice shall thereafter be “Excluded Shares.” Excluded Shares shall not be redeemed or redeemable pursuant to this Section 6, whether on such Redemption Date or thereafter.

6.3 Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Preferred Stock to be redeemed on such Redemption Date, unless such holder has elected for such shares not to be redeemed by written notice to the Corporation of such election prior to such applicable Redemption Date, shall, if a holder of shares in certificated form, surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify (but without the necessity to post any bond) the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Preferred Stock represented by a certificate are redeemed, a new certificate, instrument, or book entry representing the unredeemed shares of Preferred Stock shall promptly be issued to such holder.

6.4 Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Redemption Price payable upon redemption of the shares of Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that any certificates evidencing any of the shares of Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Preferred Stock shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of any such certificate or certificates therefor.

6.5 Special Redemption. In the event of any occurrence of any Lead Series C Investor Protective Provision Event (as defined in the Corporation’s Fourth Amended and Restated Investors’ Rights Agreement dated on or about the Filing Date, as may be amended from time to time (the “Rights Agreement”)) without the prior written consent of the Lead Series C Investor (as defined in the Rights Agreement), then unless prohibited by Delaware law
governing distributions to stockholders, shares of Series C Preferred Stock and Series D Preferred Stock then held by the Lead Series C Investor shall be redeemed by the Corporation at a price equal to the Series C Original Issue Price per share, and the Series D Original Issue Price per share, as applicable, plus, in each case, all declared but unpaid dividends thereon (the “Lead Series C Investor Redemption Price”), in three (3) equal annual installments commencing not more than sixty (60) days after receipt by the Corporation of written notice from the Lead Series C Investor requesting redemption of all shares of Series C Preferred Stock and/or Series D Preferred Stock then held by Lead Series C Investor (the “Lead Series C Investor Redemption Request”). Such Lead Series C Investor Redemption Request must be delivered by the Lead Series C Investor to the Corporation, if at all, within one year following the delivery by Lead Series C Investor of a notice to the Corporation (which notice shall be a Lead Series C Investor Notice (as defined in the Rights Agreement)) of the occurrence of such Lead Series C Investor Protective Provision Event; provided such redemption shall occur only if the Lead Series C Protective Provision Event is not cured by the Corporation within the thirty (30) day period specified in the Rights Agreement. Any failure to deliver the Lead Series C Investor Redemption Request within such one (1) year period shall constitute a waiver of the Lead Series C Investor’s redemption rights hereunder with respect to, but only with respect to, such occurrence of such Lead Series C Investor Protective Provision Event. The date of each such installment shall be referred to as a “Lead Series C Investor Redemption Date.” On or before the applicable Lead Series C Investor Redemption Date, the Lead Series C Investor shall, if a holder of shares in certificated form, surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify (but without the necessity to post any bond) the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, and thereupon the Lead Series C Investor Redemption Price for such shares shall be payable to the order of Lead Series C Investor. In the event less than all of the shares of Series C Preferred Stock or Series D Preferred Stock represented by a certificate are redeemed, a new certificate, instrument, or book entry representing the unredeemed shares of Series C Preferred Stock or Series D Preferred Stock, as applicable, shall promptly be issued to Lead Series C Investor. If on the applicable Lead Series C Investor Redemption Date the Lead Series C Investor Redemption Price payable upon redemption of the shares of Series C Preferred Stock to be redeemed on such Lead Series C Investor Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that any certificates evidencing any of the shares of Series C Preferred Stock or Series D Preferred Stock so, as applicable, called for redemption shall not have been surrendered, dividends with respect to such shares of Series C Preferred Stock shall cease to accrue after such Lead Series C Investor Redemption Date and all rights with respect to such shares shall forthwith after the Lead Series C Investor Redemption Date terminate, except only the right of the holders to receive the Lead Series C Investor Redemption Price without interest upon surrender of any such certificate or certificates therefor.

7. Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Preferred Stock following redemption.
8. Waiver. Any of the rights, powers, preferences and other terms of (a) the Series A Preferred Stock set forth herein may be waived on behalf of all holders of Series A Preferred Stock only by the affirmative written consent or vote of the Series A Requisite Investors, (b) the Series B Preferred Stock set forth herein may be waived on behalf of all holders of Series B Preferred Stock only by the affirmative written consent or vote of the Series B Requisite Investors, (c) the Series C Preferred Stock set forth herein may be waived on behalf of all holders of Series C Preferred Stock only by the affirmative written consent or vote of the Series C Requisite Investors, (d) the Series D Preferred Stock set forth herein may be waived on behalf of all holders of Series D Preferred Stock only by the affirmative written consent or vote of the Series D Requisite Investors and (e) the Series E Preferred Stock set forth herein may be waived on behalf of all holders of Series E Preferred Stock only by the affirmative written consent or vote of the Series E Requisite Investors.

9. Notices. Any notice required or permitted by the provisions of this Article Fourth to be given to a holder of shares of Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

FIFTH: Subject to any additional vote required by the Certificate of Incorporation or Bylaws, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

SIXTH: Subject to any additional vote required by the Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

SEVENTH: Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

EIGHTH: Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

NINTH: To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article Ninth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.
TENTH: The following indemnification provisions shall apply to the persons enumerated below.

1. **Right to Indemnification of Directors and Officers.** The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an "**Indemnified Person**") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**"), by reason of the fact that such person, or a person for whom such person is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys’ fees) reasonably incurred by such Indemnified Person in such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in **Section 3** of this Article Tenth, the Corporation shall be required to indemnify an Indemnified Person in connection with a Proceeding (or part thereof) commenced by such Indemnified Person only if the commencement of such Proceeding (or part thereof) by the Indemnified Person was authorized in advance by the Board of Directors.

2. **Prepayment of Expenses of Directors and Officers.** The Corporation shall pay the expenses (including attorneys’ fees) incurred by an Indemnified Person in defending any Proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnified Person to repay all amounts advanced if it should be ultimately determined that the Indemnified Person is not entitled to be indemnified under this Article Tenth or otherwise.

3. **Claims by Directors and Officers.** If a claim for indemnification or advancement of expenses under this Article Tenth is not paid in full within thirty (30) days after a written claim therefor by the Indemnified Person has been received by the Corporation, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

4. **Indemnification of Employees and Agents.** The Corporation may indemnify and advance expenses to any person who was or is made or is threatened to be made or is otherwise involved in any Proceeding by reason of the fact that such person, or a person for whom such person is the legal representative, is or was an employee or agent of the Corporation or, while an employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses
5. **Advancement of Expenses of Employees and Agents.** The Corporation may pay the expenses (including attorneys’ fees) reasonably incurred by an employee or agent in defending any Proceeding in advance of its final disposition on such terms and conditions as may be determined by the Board of Directors.

6. **Non-Exclusivity of Rights.** The rights conferred on any person by this Article Tenth shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the certificate of incorporation, bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

7. **Other Indemnification.** The Corporation’s obligation, if any, to indemnify any person who was or is serving at its request as a director, officer or employee of another Corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise shall be reduced by any amount such person may collect as indemnification from such other Corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise.

8. **Insurance.** The Board of Directors may, to the full extent permitted by applicable law as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer or officers to purchase and maintain at the Corporation’s expense insurance: (a) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors, officers and employees under the provisions of this Article Tenth; and (b) to indemnify or insure directors, officers and employees against liability in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article Tenth.

9. **Amendment or Repeal.** Any repeal or modification of the foregoing provisions of this Article Tenth shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification. The rights provided hereunder shall inure to the benefit of any Indemnified Person and such person’s heirs, executors and administrators.

**ELEVENTH:** The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “**Excluded Opportunity**” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, manager, director, stockholder, officer, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, “**Covered Persons**”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation.
TWELFTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the Delaware General Corporation Law or the Corporation’s Certificate of Incorporation or Bylaws or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article Twelfth shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Twelfth (including, without limitation, each portion of any sentence of this Article Twelfth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

THIRTEENTH: Distributions by the Corporation may be made without regard to "preferential dividends arrears amount" or any "preferential rights," as such terms may be used in Section 500 of the California Corporations Code.

* * *

3. That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of this Corporation in accordance with Section 228 of the General Corporation Law.

4. That this Fifth Amended and Restated Certificate of Incorporation, whichrestates and integrates and further amends the provisions of this Corporation’s Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

[SIGNATURE PAGE TO FOLLOW]
IN WITNESS WHEREOF, this Fifth Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this Corporation on this 10th day of April, 2018.

/s/ Glen Tullman
Glen Tullman, Chief Executive Officer
CERTIFICATE OF AMENDMENT OF THE
FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
LIVONGO HEALTH, INC.

The undersigned, Glen Tullman, hereby certifies that:

1. He is the duly elected and acting Executive Chairman of Livongo Health, Inc., a Delaware corporation.

2. The name of the Corporation is Livongo Health, Inc. The Corporation’s original Certificate of Incorporation was filed with the Secretary of State of Delaware on October 16, 2008 under the name EosHealth, Inc.

3. Pursuant to Section 242 of the General Corporation Law of the State of Delaware, this Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation amends the Corporation’s Fifth Amended and Restated Certificate of Incorporation as follows:

The opening paragraph of Article Fourth of the Corporation’s Fifth Amended and Restated Certificate of Incorporation is amended and restated to read in its entirety as follows:

“FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 203,500,000 shares of Common Stock, $0.001 par value per share (“Common Stock”) and (ii) 117,231,018 shares of Preferred Stock, $0.001 par value per share (“Preferred Stock”), of which 20,788,612 shares are hereby designated “Series A Preferred Stock”, 17,869,906 shares are hereby designated “Series B Preferred Stock”, 29,713,664 shares are hereby designated “Series C Preferred Stock”, 23,547,874 shares are hereby designated “Series D Preferred Stock”, and 25,310,962 shares are hereby designated “Series E Preferred Stock”.”

Subsection 4.4.1(j)(iii) of paragraph B. of Article Fourth of the Corporation’s Fifth Amended and Restated Certificate of Incorporation is amended and restated to read in its entirety as follows:

“(iii) up to 57,194,883 shares of Common Stock, including Options therefor (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to the Plans of the Corporation, whether is used before or after the Filing Date (provided that any Options for such shares that expire or terminate unexercised or any restricted stock repurchased by the Corporation at cost shall not be counted toward such maximum number unless and until such shares are re-granted as new stock grants (or as new Options) pursuant to the terms of any such plan, agreement or arrangement);”
4. The foregoing Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation has been duly adopted by the Corporation’s Board of Directors and stockholders in accordance with the applicable provisions of Sections 141, 228, and 242 of the Delaware General Corporation Law.

[Signature Page Follows]
IN WITNESS WHEREOF, this Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Corporation at Chicago, Illinois, on the date indicated below.

/s/ Glen Tullman
Glen Tullman, Executive Chairman

Date: 1/7/2019
CERTIFICATE OF AMENDMENT OF
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
LIVONGO HEALTH, INC.

Livongo Health, Inc., a corporation organized and existing under the laws of the State of Delaware (the “Corporation”), certifies that:

1. The name of the Corporation is Livongo Health, Inc. The Corporation’s original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on October 16, 2008 under the name of EosHealth, Inc.

2. The Board of Directors of this Corporation, acting in accordance with Section 242 and Section 141 of the General Corporation Law of the State of Delaware, duly adopted resolutions approving the amendment to the Amended and Restated Certificate of Incorporation (the “Restated Certificate”) of this Corporation set forth in the fourth paragraph below (the “Amendment”), declared such Amendment to be advisable, and authorized the officers of the Corporation to solicit the approval of the stockholders of the Corporation with respect thereto.

3. That the holders of the requisite number of shares of the Corporation have duly consented to the adoption of the Amendment in accordance with Section 228 and Section 242 of the General Corporation Law of the State of Delaware.

4. That the first paragraph of Article IV of the Restated Certificate is amended to read in its entirety as follows:

"Immediately upon the filing of this Certificate of Amendment to Amended and Restated Certificate of Incorporation of the Corporation, (i) each two (2) shares of Common Stock outstanding immediately prior to such filing or held in treasury will be automatically combined into and become one (1) fully-paid, non-assessable share of Common Stock, (ii) each two (2) shares of Series A Preferred Stock (as defined below) outstanding immediately prior to such filing or held in treasury will be automatically combined into and become one (1) fully-paid, non-assessable share of Series A Preferred Stock, (iii) each two (2) shares of Series B Preferred Stock (as defined below) outstanding immediately prior to such filing or held in treasury will be automatically combined into and become one (1) fully-paid, non-assessable share of Series B Preferred Stock, (iv) each two (2) shares of Series C Preferred Stock (as defined below) outstanding immediately prior to such filing or held in treasury will be automatically combined into and become one (1) fully-paid, non-assessable share of Series C Preferred Stock, (v) each two (2) shares of Series D Preferred Stock (as defined below) outstanding immediately prior to such filing or held in treasury will be automatically combined into and become one (1) fully-paid, non-assessable share of Series D Preferred Stock, and (vi) each two (2) shares of Series E Preferred Stock (as defined below) outstanding immediately prior to such filing or held in treasury will be automatically combined into and become one (1) fully-paid, non-assessable share of Series E Preferred Stock on a certificate by certificate basis. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair value of a share of Common Stock or Preferred Stock as determined by the Board of Directors of the Corporation."
After giving effect to the reverse stock splits described above, the total number of shares of stock that the Corporation shall have authority to issue is one hundred and sixty million (160,000,000) shares, consisting of one hundred million (100,000,000) shares of Common Stock, $0.001 par value per share, and sixty million (60,000,000) shares of Preferred Stock, $0.001 par value per share. The first Series of Preferred Stock shall be designated “Series A Preferred Stock” and shall consist of eleven million (11,000,000) shares. The second Series of Preferred Stock shall be designated “Series B Preferred Stock” and shall consist of nine million (9,000,000) shares. The third Series of Preferred Stock shall be designated “Series C Preferred Stock” and shall consist of fifteen million (15,000,000) shares. The fourth Series of Preferred Stock shall be designated “Series D Preferred Stock” and shall consist of twelve million (12,000,000) shares. The fifth Series of Preferred Stock shall be designated “Series E Preferred Stock” and shall consist of thirteen million (13,000,000) shares.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of the Amended and Restated Certificate of Incorporation on June 27, 2019.

/s/ Zane Burke  
Zane Burke  
Chief Executive Officer
SIXTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

LIVONGO HEALTH, INC.

a Delaware corporation

Livongo Health, Inc., a corporation organized and existing under the laws of the State of Delaware (the “Corporation”), hereby certifies as follows:

A. The name of the Corporation is Livongo Health, Inc., and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on October 16, 2008, under the name EosHealth, Inc.

B. This Sixth Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware (the “DGCL”), restates, integrates and further amends the provisions of the Corporation’s Fifth Amended and Restated Certificate of Incorporation, and has been duly approved by the written consent of the stockholders of the Corporation in accordance with Section 228 of the DGCL.

C. The text of the Sixth Amended and Restated Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

ARTICLE I

The name of this corporation is Livongo Health, Inc.

ARTICLE II

The address of the Corporation’s registered office in the State of Delaware is 850 New Burton Road Suite 201, Dover, County of Kent, 19904. The name of the Corporation’s registered agent at such address is Cogency Global Inc.

ARTICLE III

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

4.1 Authorized Capital Stock. The total number of shares of all classes of capital stock that the Corporation is authorized to issue is 1,000,000,000 shares, consisting of 900,000,000 shares of Common Stock, par value $0.001 per share (the “Common Stock”), and 100,000,000 shares of Preferred Stock, par value $0.001 per share (the “Preferred Stock”).
4.2 Increase or Decrease in Authorized Capital Stock. The number of authorized shares of Preferred Stock or Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the then-outstanding shares of capital stock of the Corporation entitled to vote thereon, irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), voting together as a single class, without a separate vote of the holders of the class or classes the number of authorized shares of which are being increased or decreased, unless a vote by any holders of one or more series of Preferred Stock is required by the express terms of any series of Preferred Stock as provided for or fixed pursuant to the provisions of Section 4.4 of this Article IV.

4.3 Common Stock.

(a) The holders of shares of Common Stock shall be entitled to one vote for each such share on each matter properly submitted to the stockholders on which the holders of shares of Common Stock are entitled to vote. Except as otherwise required by law or this certificate of incorporation (this "Certificate of Incorporation" which term, as used herein, shall mean the certificate of incorporation of the Corporation, as amended from time to time, including the terms of any certificate of designation of any series of Preferred Stock), and subject to the rights of the holders of Preferred Stock, at any annual or special meeting of the stockholders the holders of shares of Common Stock shall have the right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders; provided, however, that, except as otherwise required by law or expressly provided for in this Certificate of Incorporation, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation that relates solely to the terms, number of shares, powers, designations, preferences, or relative participating, optional or other special rights (including, without limitation, voting rights), or to qualifications, limitations or restrictions thereon, of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one more other such series, to vote thereon pursuant to this Certificate of Incorporation (including, without limitation, by any certificate of designation relating to any series of Preferred Stock) or pursuant to the DGCL.

(b) Subject to the rights of the holders of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions (payable in cash, property or capital stock of the Corporation) when, as and if declared thereon by the Board of Directors of the Corporation (the "Board") from time to time out of any assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in such dividends and distributions.

(c) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, and subject to the rights of the holders of Preferred Stock in respect thereof, the holders of shares of Common Stock shall be entitled to receive all the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Common Stock held by them.
4.4 Preferred Stock

(a) The Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board (authority to do so being hereby expressly vested in the Board). The Board is further authorized, subject to limitations prescribed by law, to fix by resolution or resolutions and to set forth in a certificate of designation filed pursuant to the DGCL the powers, designations, preferences and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, if any, of any series of Preferred Stock, including without limitation dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including, without limitation, sinking fund provisions), redemption price or prices, and liquidation preferences of any such series, and the number of shares constituting any such series and the designation thereof, or any of the foregoing.

(b) The Board is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any series subject to the powers, preferences and rights, and the qualifications, limitations and restrictions thereof stated in the Certificate of Incorporation or the resolution of the Board originally fixing the number of shares of such series. If the number of shares of any series is so decreased, then the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

ARTICLE V

5.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board.

5.2 Number of Directors; Election; Term.

(a) Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, the number of directors that constitutes the entire Board shall be fixed solely by resolution of the Board acting pursuant to a resolution adopted by a majority of the Whole Board. For purposes of this Certificate of Incorporation, the term “Whole Board” shall mean the total number of authorized directors whether or not there exist any vacancies or unfilled seats in previously authorized directorships.

(b) Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, effective upon the closing date of the initial sale of shares of Common Stock in the Corporation’s initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the “Effective Date”), the directors of the Corporation shall be divided into three classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. The initial assignment of members of the Board to each such class shall be made by the Board. The term of office of the initial Class I directors shall expire at the first regularly-scheduled annual meeting of the stockholders following the Effective Date, the term of office of the initial Class II directors shall expire at the second annual meeting of the
stockholders following the Effective Date and the term of office of the initial Class III directors shall expire at the third annual meeting of the stockholders following the Effective Date. At each annual meeting of stockholders, commencing with the first regularly-scheduled annual meeting of stockholders following the Effective Date, each of the successors elected to replace the directors of a class whose term shall have expired at such annual meeting shall be elected to hold office until the third annual meeting next succeeding their election and until their respective successor shall have been duly elected and qualified. Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, if the number of directors that constitutes the Board is changed, any newly created directorships or decrease in directorships shall be so apportioned by the Board among the classes as to make all classes as nearly equal in number as is practicable, provided that no decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

(c) Notwithstanding the foregoing provisions of this Section 5.2, and subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation, or removal.

(d) Elections of directors need not be by written ballot unless the Bylaws of the Corporation (the “Bylaws”) shall so provide.

5.3 Removal. Effective upon the Effective Date, and subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, for so long as directors of the Corporation shall be divided into classes, a director may be removed from office by the stockholders of the Corporation only for cause.

5.4 Vacancies and Newly Created Directorships. Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, and except as otherwise provided in the DGCL or as permitted in the specific case by resolution of the Board, vacancies occurring on the Board for any reason and newly created directorships resulting from an increase in the authorized number of directors may be filled only by vote of a majority of the remaining members of the Board, although less than a quorum, or by a sole remaining director, and not by stockholders. A person so chosen to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be duly elected and qualified.

ARTICLE VI

In furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to adopt, amend or repeal the Bylaws. With respect to the power of holders of capital stock of the Corporation to adopt, amend or repeal the Bylaws, notwithstanding any other provision of the Bylaws or any provision of law which might otherwise permit a lesser vote, but in addition to any affirmative vote of the holders of any particular class or series of the capital stock of the Corporation required by law, the Certificate of Incorporation, the Bylaws or any Preferred Stock, the affirmative vote of the holders of at least 66% of the voting power of all of the then-outstanding
shares entitled to vote thereon, voting together as a single class, shall be required for stockholders to adopt, amend or repeal any provision of the Bylaws.

ARTICLE VII

7.1 No Action by Written Consent of Stockholders. Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to act by written consent, effective upon the Effective Date any action required or permitted to be taken by stockholders of the Corporation must be effected at a duly called annual or special meeting of the stockholders and may not be effected by written consent in lieu of a meeting.

7.2 Meetings of Stockholders. Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to call a special meeting of the holders of such series, special meetings of stockholders of the Corporation may be called only by the Board, acting pursuant to a resolution adopted by a majority of the Whole Board, the chairperson of the Board, the chief executive officer of the Corporation or the president of the Corporation (in the absence of a chief executive officer of the Corporation), but a special meeting of stockholders may not be called by any other person or persons and the ability of the stockholders to call a special meeting is hereby specifically denied. The Board, acting pursuant to a resolution adopted by a majority of the Whole Board, or the chairperson of a meeting of stockholders may cancel, postpone or reschedule any previously scheduled meeting of stockholders at any time, before or after the notice for such meeting has been sent to the stockholders.

7.3 Advance Notice. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

7.4 No Cumulative Voting. No stockholder will be permitted to cumulate votes at any election of directors.

ARTICLE VIII

8.1 Limitation of Personal Liability. To the fullest extent permitted by the DGCL, as it presently exists or may hereafter be amended from time to time, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

8.2 Indemnification.

The Corporation shall indemnify, to the fullest extent permitted by applicable law, any director or officer of the Corporation who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative
or investigative (a "Proceeding") by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding. The Corporation shall be required to indemnify a person in connection with a Proceeding (or part thereof) initiated by such person only if the Proceeding (or part thereof) was authorized by the Board.

The Corporation shall have the power to indemnify, to the extent permitted by the DGCL, as it presently exists or may hereafter be amended from time to time, any employee or agent of the Corporation who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding.

Any repeal or amendment of this Article VIII by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate of Incorporation inconsistent with this Article VIII will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors) and shall not adversely affect any right or protection of any current or former director of the Corporation existing at the time of such repeal or amendment or adoption of such inconsistent provision with respect to acts or omissions occurring prior to such repeal or amendment or adoption of such inconsistent provision.

ARTICLE IX

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation (including, without limitation, any rights, powers, preferences or other designations of Preferred Stock), in the manner now or hereafter prescribed by this Certificate of Incorporation and the DGCL; and all rights, powers, preferences and privileges herein conferred upon stockholders by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article IX. Notwithstanding any other provision of this Certificate of Incorporation, and in addition to any other vote that may be required by law or the terms of any series of Preferred Stock, the affirmative vote of the holders of at least 66% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required to amend, alter or repeal, or adopt any provision as part of this Certificate of Incorporation inconsistent with the purpose and intent of, Article V, Article VI, Article VII or this Article IX (including, without limitation, any such article as renumbered as a result of any amendment, alteration, change, repeal or adoption of any other article).
IN WITNESS WHEREOF, Livongo Health, Inc. has caused this Sixth Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer on this  day of  2019.

By:

Name: Zane Burke  
Title: Chief Executive Officer

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AMENDED AND RESTATED

BYLAWS OF

EOSHEALTH, INC.
(A DELAWARE CORPORATION)
AMENDED AND RESTATED
BYLAWS OF
EOSHEALTH, INC.
(A DELAWARE CORPORATION)
ARTICLE I
OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle.

Section 2. Other Offices. The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II
CORPORATE SEAL

Section 3. Corporate Seal. The Board of Directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, “Corporate Seal-Delaware.” Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III
STOCKHOLDERS’ MEETINGS

Section 4. Place of Meetings. Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law (“DGCL”).

Section 5. Annual Meeting.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of
stockholders: (i) pursuant to the corporation’s notice of meeting of stockholders; (ii) by or at the direction of the Board of Directors; or (iii) by any
stockholder of the corporation who was a stockholder of record at the time of giving of notice provided for in the following paragraph, who is entitled
to vote at the meeting and who complied with the notice procedures set forth in Section 5.

(b) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the
meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of
these Bylaws, (i) the stockholder must have given timely notice thereof in writing to the Secretary of the corporation, (ii) such other business must be a
proper matter for stockholder action under the DGCL, (iii) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination
is made, has provided the corporation with a Solicitation Notice (as defined in this Section 5(b)), such stockholder or beneficial owner must, in the case
of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the corporation’s voting shares required under
applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to
holders of a percentage of the corporation’s voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the
nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice,
and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such
business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this
Section 5. To be timely, a stockholder’s notice shall be delivered to the Secretary at the principal executive offices of the corporation not later than the
close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year’s annual
meeting; provided, however, that in the event that the date of the annual meeting is advanced more than 30 days prior to or delayed by more than 30
days after the anniversary of the preceding year’s annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close
of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual
meeting or the tenth day following the day on which public announcement of the date of such meeting is first made. In no event shall the public
announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder’s notice as described above. Such
stockholder’s notice shall set forth: (A) as to each person whom the stockholder proposed to nominate for election or reelection as a director all
information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is
otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the “1934 Act”) and Rule
14a-4(d) thereunder (including such person’s written consent to being named in the proxy statement as a nominee and to serving as a director if
elected); (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought
before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the
beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on
whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation’s books, and of such
beneficial owner, (ii) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, and (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of the proposal, at least the percentage of the corporation’s voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation’s voting shares to elect such nominee or nominees (an affirmative statement of such intent, a “Solicitation Notice”).

(c) Notwithstanding anything in the second sentence of Section 5(b) of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least 100 days prior to the first anniversary of the preceding year’s annual meeting, a stockholder’s notice required by this Section 5 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the corporation.

(d) Only such persons who are nominated in accordance with the procedures set forth in this Section 5 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 5. Except as otherwise provided by law, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

(e) Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders’ meeting, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation proxy statement pursuant to Rule 14a-8 under the 1934 Act.

(f) For purposes of this Section 5, “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption) or (iv) by the holders of shares entitled to cast not less than 10% of the votes at the meeting, and shall be held at such place, on such date, and at such time as the Board of Directors shall fix.

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If a special meeting is properly called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by certified or registered mail, return receipt requested, or by telegraphic or other facsimile transmission to the Chairman of the Board of Directors, the Chief Executive Officer, or the Secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than 35 nor more than 120 days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the officer receiving the request shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. Nothing contained in this paragraph (b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

Section 7. Notice of Meetings. Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute, or by the
Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of a majority of shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

Section 9. Adjournment and Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three years from its date of creation unless the proxy provides for a longer period.

Section 11. Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one votes, his act binds all; (b) if more than one votes, the act of the majority so voting binds all; (c) if more than one votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.
Section 12. List of Stockholders. The Secretary shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

Section 13. Action Without Meeting.

(a) Unless otherwise provided in the Certificate of Incorporation, any action required by statute to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, or by electronic transmission setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

(b) Every written consent or electronic transmission shall bear the date of signature of each stockholder who signs the consent, and no written consent or electronic transmission shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered to the corporation in the manner herein required, written consents or electronic transmissions signed by a sufficient number of stockholders to take action are delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation’s registered office shall be by hand or by certified or registered mail, return receipt requested.

(c) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing or by electronic transmission and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take action were delivered to the corporation as provided in Section 228(c) of the DGCL. If the action which is consented to is such as would have required the filing of a certificate under any section of the DGCL if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.
(d) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in the state of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation’s registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the board of directors of the corporation. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

Section 14. Organization.

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or, if the President is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on

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matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV
DIRECTORS

Section 15. Number and Term of Office. The authorized number of directors of the corporation shall be fixed by the Board of Directors from time to time.

Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient.

Section 16. Powers. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 17. Term of Directors.
(a) Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, directors shall be elected at each annual meeting of stockholders to serve until the next annual meeting of stockholders and his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 18. Vacancies.
(a) Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, provided, however, that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director’s successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director.
Section 19. Resignation. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

Section 20. Removal.

(a) Subject to any limitations imposed by applicable law, the Board of Directors or any director may be removed from office at any time (i) with cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors or (ii) without cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation, entitled to elect such director.

Section 21. Meetings

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, including a voice-messaging system or other system designated to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for a regular meeting of the Board of Directors.

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the President or any director.

(c) Meetings by Electronic Communications Equipment. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.
Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least 24 hours before the date and time of the meeting. If notice is sent by US mail, it shall be sent by first class mail, postage prepaid at least three days before the date of the meeting. Notice of any meeting may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 22. Quorum and Voting.

(a) Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; provided, however, at any meeting, whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

Section 23. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 24. Fees and Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.
Section 25. Committees.

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of one or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the corporation.

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) Term. The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Bylaw may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the
manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

Section 26. Organization. At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or if the President is absent, the most senior Vice President, (if a director) or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

ARTICLE V
OFFICERS

Section 27. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer, the Chief Operating Officer, the Chief Scientific Officer and Founder, the Treasurer and the Controller, all of whom shall be elected at the annual organizational meeting of the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers, Assistant Controllers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

Section 28. Tenure and Duties of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.
(b) Duties of Chairman of the Board of Directors. The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. If there is no President, then the Chairman of the Board of Directors shall also serve as the Chief Executive Officer of the corporation and shall have the powers and duties prescribed in paragraph (c) of this Section 28.

(c) Duties of President. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. Unless some other officer has been elected Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(d) Duties of Vice Presidents. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(e) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.
Section 29. Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 30. Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission notice to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 31. Removal. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written or electronic consent of the directors in office at the time, or by any committee or superior officers.

ARTICLE VI
EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 32. Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 33. Voting of Securities Owned by the Corporation. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.
ARTICLE VII
SHARES OF STOCK

Section 34. Form and Execution of Certificates. The shares of the corporation shall be represented by certificates, or shall be uncertificated. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation represented by certificate shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 35. Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner’s legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

Section 36. Transfers

(a) No holder of any of the shares of stock of the corporation may sell, transfer, assign, pledge, or otherwise dispose of or encumber any of the shares of stock of the corporation or any right or interest therein, whether voluntarily or by operation of law, or by gift or otherwise (each, a “Transfer”) without the prior written consent of the corporation, upon duly authorized action of its Board of Directors. The corporation may withhold consent for any legitimate corporate purpose, as determined by the Board of Directors. Examples of the basis for the corporation to withhold its consent include, without limitation, (i) if such Transfer to individuals, companies or any other form of entity identified by the corporation as a potential competitor or considered by the corporation to be unfriendly; or (ii) if such Transfer increases the risk of the corporation having a class of security held of record by 2,000 or more persons, or 500 or more persons who are not accredited investors (as such term is defined by the SEC), as described in Section 12(g) of the 1934 Act and any related regulations, or otherwise requiring the corporation to register any class of securities under the 1934 Act; or (iii) if such Transfer would result in the loss of any federal or state securities law exemption relied upon by the corporation in connection with the initial issuance of such shares or the issuance of any other securities; or (iv) if such Transfer is facilitated in any manner by any public posting, message board, trading portal, internet site, or similar method of communication, including without limitation any
trading portal or internet site intended to facilitate secondary transfers of securities; or (v) if such Transfer is to be effected in a brokered transaction; or
(vi) if such Transfer represents a Transfer of less than all of the shares then held by the stockholder and its affiliates or is to be made to more than a single transferee.

(b) If a stockholder desires to Transfer any shares, then the stockholder shall first give written notice thereof to the corporation. The notice shall name the proposed transferee and state the number of shares to be transferred, the proposed consideration, and all other terms and conditions of the proposed transfer.

(c) Any Transfer, or purported Transfer, of shares not made in strict compliance with this Section 36 shall be null and void, shall not be recorded on the books of the corporation and shall not be recognized by the corporation.

(d) The foregoing restriction on Transfer shall terminate upon the date securities of the corporation are first offered to the public pursuant to a registration statement filed with, and declared effective by, the United States Securities and Exchange Commission under the Securities Act of 1933, as amended.

(e) The certificates representing shares of stock of the corporation shall bear on their face the following legend so long as the foregoing Transfer restrictions are in effect:

“THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A TRANSFER RESTRICTION, AS PROVIDED IN THE BYLAWS OF THE CORPORATION.”

Section 37. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than 60 nor less than ten days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors.
Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation’s registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 38. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII
OTHER SECURITIES OF THE CORPORATION

Section 39. Execution of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 34), may be signed by the Chairman of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be
issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX
DIVIDENDS

Section 40. Declaration of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

Section 41. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X
FISCAL YEAR

Section 42. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XI
INDEMNIFICATION

Section 43. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents.
(a) Directors and Officers. The corporation shall indemnify its directors and officers to the fullest extent not prohibited by the DGCL or any other applicable law; provided, however, that the corporation may modify the extent of such indemnification by individual contracts with its directors and officers; and, provided, further, that the corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

(b) Employees and Other Agents. The corporation shall have power to indemnify its employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person to such officers or other persons as the Board of Directors shall determine.

(c) Expenses. The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer, of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding, provided, however, that, if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section 43 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Bylaw, no advance shall be made by the corporation to an officer of the corporation (except by reason of the fact that such officer is or was a director of the corporation, in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of a quorum consisting of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

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(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or officer. Any right to indemnification or advances granted by this Bylaw to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within 90 days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise as a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

(e) Non-Exclusivity of Rights. The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL or any other applicable law.

(f) Survival of Rights. The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the DGCL, or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Bylaw.

(h) Amendments. Any repeal or modification of this Bylaw shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.
(i) **Saving Clause.** If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law. If this Section 43 shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and officer to the full extent under applicable law.

(j) **Certain Definitions.** For the purposes of this Bylaw, the following definitions shall apply:

1. The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

2. The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

3. The term the “corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Bylaw with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

4. References to a “director,” “executive officer,” “officer,” “employee,” or “agent” of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

5. References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this Bylaw.
Section 44. Notices.

(a) Notice to Stockholders. Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by United States mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means.

(b) Notice to Directors. Any notice required to be given to any director may be given by the method stated in subsection (a), or as provided for in Section 21 of these Bylaws. If such notice is not delivered personally, it shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) Notice to Person with Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.
(f) **Notice to Stockholders Sharing an Address.** Except as otherwise prohibited under DGCL, any notice given under the provisions of DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within 60 days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

**ARTICLE XIII**

**AMENDMENTS**

**Section 45. Amendments.** The Board of Directors is expressly empowered to adopt, amend or repeal Bylaws of the corporation. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the corporation; *provided, however,* that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

**ARTICLE XIV**

**LOANS TO OFFICERS**

**Section 46. Loans to Officers.** Except as otherwise prohibited under applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.
CERTIFICATE OF AMENDMENT
OF THE BYLAWS OF
LIVONGO HEALTH, INC.

The undersigned, Brian Vandenberg, hereby certifies that:

1. He is the duly elected, qualified, and acting Secretary of Livongo Health, Inc., a Delaware corporation (the “Company”).

2. The Amended and Restated Bylaws of the Company (the “Bylaws”) were amended, effective April 3, 2016, by the Board of Directors and stockholders of the Company as follows:

   (a) That Article IV, Section 25 of the Bylaws was amended to append a new subsection (e) to read in its entirety as follows:

   “(e) Composition. Each Preferred Director (as defined in the Certificate of Incorporation in effect at any given time) and each director designated to serve on the Board of Directors by 7Wire Ventures LLC – Series EosHealth pursuant to the Company’s Second Amended and Restated Voting Agreement dated April 7, 2016, as may be amended from time to time, shall be permitted to serve on any or all committees of the Board of Directors.”

   (b) That Article VII, Section 36 of the Bylaws was amended to append a new subsection (f) to read in its entirety as follows:

   “(f) Notwithstanding the foregoing, each holder of any shares of stock of the corporation may transfer any or all of such shares to an Affiliate of such stockholder without the prior written consent of the corporation required pursuant to Section 36(a) above. As used herein, “Affiliate” means, with respect to any Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including, without limitation, any general partner, officer, director, or managing member of such Person and any venture capital fund now or hereafter existing which is controlled by or under common control with one or more general partners or shares the same management company with such Person. As used herein, “Person” means any individual, corporation, partnership, trust, limited liability company, association or other entity.”

[Signature Page Follows]
AMENDED AND RESTATED BYLAWS OF
LIVONGO HEALTH, INC.
(Adopted on , 2019)
(Effective upon the effectiveness of the registration statement for the Company’s initial public offering)
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ARTICLE I - CORPORATE OFFICES

1.1 REGISTERED OFFICE
The registered office of Livongo Health, Inc. (the “Corporation”) shall be fixed in the Corporation’s certificate of incorporation, as the same may be amended from time to time.

1.2 OTHER OFFICES
The Corporation may at any time establish other offices at any place or places.

ARTICLE II - MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS
Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the board of directors of the Corporation (the “Board”). The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the “DGCL”) or any successor provision. In the absence of any such designation or determination, stockholders’ meetings shall be held at the Corporation’s principal executive office.

2.2 ANNUAL MEETING
The annual meeting of stockholders shall be held on such date, at such time, and at such place (if any) within or without the State of Delaware, as the Board shall designate from time to time and stated in the Corporation’s notice of the meeting. At the annual meeting, directors shall be elected and any other proper business, brought in accordance with Section 2.4 of these bylaws, may be transacted. The Board, acting pursuant to a resolution adopted by a majority of the Whole Board, or the chairperson of the meeting, may cancel, postpone or reschedule any previously scheduled annual meeting at any time, before or after the notice for such meeting has been sent to the stockholders. For purposes of these bylaws, the term “Whole Board” shall mean the total number of authorized directors whether or not there exist any vacancies or unfilled seats in previously authorized directorships (provided for the avoidance of doubt that voting power shall be attributed to any such vacancies or unfilled seats).

2.3 SPECIAL MEETING
(i) A special meeting of the stockholders, other than as required by statute, may be called at any time by the Board, acting pursuant to a resolution adopted by a majority of the Whole Board, the chairperson of the Board, the chief executive officer or the president (in the absence of a chief executive officer), but a special meeting may not be called by any other person or persons. The Board, acting pursuant to a resolution adopted by a majority of the Whole Board, or the chairperson of the meeting may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders.
(ii) The notice of a special meeting shall include the purpose for which the meeting is called. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the Board, chairperson of the Board, chief executive officer or president (in the absence of a chief executive officer). Nothing contained in this Section 2.3(ii) shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the Board may be held.

2.4 ADVANCE NOTICE PROCEDURES

(i) Advance Notice of Stockholder Business. At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be brought: (A) pursuant to the Corporation’s proxy materials with respect to such meeting, (B) by or at the direction of the Board, or (C) by a stockholder of the Corporation who (1) is a stockholder of record at the time of the giving of the notice required by this Section 2.4(i), on the record date for the determination of stockholders entitled to notice of the annual meeting and on the record date for the determination of stockholders entitled to vote at the annual meeting and (2) has timely complied in proper written form with the notice procedures set forth in this Section 2.4(i). In addition, for business to be properly brought before an annual meeting by a stockholder, such business must be a proper matter for stockholder action pursuant to these bylaws and applicable law. For the avoidance of doubt, clause (C) above shall be the exclusive means for a stockholder to bring business (other than business included in the Corporation’s proxy materials pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended, or any successor thereto (the “1934 Act”)) before an annual meeting of stockholders.

(a) To comply with clause (C) of Section 2.4(i) above, a stockholder’s notice must set forth all information required under this Section 2.4(i) and must be timely received by the secretary of the Corporation. To be timely, a stockholder’s notice must be received by the secretary at the principal executive offices of the Corporation not later than the 45th day nor earlier than the 75th day before the one-year anniversary of the date on which the Corporation first mailed its proxy materials or a notice of availability of proxy materials ( whichever is earlier) for the preceding year’s annual meeting; provided, however, that in the event that no annual meeting was held in the previous year or if the date of the annual meeting is advanced by more than 30 days prior to or delayed by more than 60 days after the one-year anniversary of the date of the previous year’s annual meeting, then, for notice by the stockholder to be timely, it must be so received by the secretary not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of (i) the 90th day prior to such annual meeting, or (ii) the tenth day following the day on which Public Announcement (as defined below) of the date of such annual meeting is first made. In no event shall any adjournment, rescheduling or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder’s notice as described in this Section 2.4(i)(a). “Public Announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

(b) To be in proper written form, a stockholder’s notice to the secretary must set forth as to each matter of business the stockholder intends to bring before the annual meeting: (1) a brief description of the business intended to be brought before the annual meeting, the text of the proposed business (including the text of any resolutions proposed for consideration) and the reasons for conducting such business at the annual meeting, (2) the name and address, as they appear on the Corporation’s books, of the stockholder proposing such business and any Stockholder Associated Person (as defined below), (3) the class and number of shares of the Corporation that are held of record or are
beneficially owned by the stockholder or any Stockholder Associated Person and any derivative positions held or beneficially held by the stockholder or any Stockholder Associated Person, (4) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of such stockholder or any Stockholder Associated Person with respect to any securities of the Corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit from share price changes for, or to increase or decrease the voting power of, such stockholder or any Stockholder Associated Person with respect to any securities of the Corporation, (5) any material interest of the stockholder or a Stockholder Associated Person in such business, and (6) a statement whether either such stockholder or any Stockholder Associated Person will deliver a proxy statement to holders of at least the percentage of the Corporation’s voting shares required under applicable law to carry the proposal (such information provided and statements made as required by clauses (1) through (6), a “Business Solicitation Statement”). In addition, to be in proper written form, a stockholder’s notice to the secretary must be supplemented not later than ten days following the record date for the determination of stockholders entitled to notice of the meeting to disclose the information contained in clauses (3) and (4) above as of such record date. For purposes of this Section 2.4, a “Stockholder Associated Person” of any stockholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder and on whose behalf the proposal or nomination, as the case may be, is being made, or (iii) any person controlling, controlled by or under common control with such person referred to in the preceding clauses (i) and (ii).

(c) Without exception, no business shall be conducted at any annual meeting except in accordance with the provisions set forth in this Section 2.4(i) and, if applicable, Section 2.4(ii). In addition, business proposed to be brought by a stockholder may not be brought before the annual meeting if such stockholder or a Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Business Solicitation Statement applicable to such business or if the Business Solicitation Statement applicable to such business contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that business was not properly brought before the annual meeting and in accordance with the provisions of this Section 2.4(i), and, if the chairperson should so determine, he or she shall so declare at the annual meeting that any such business not properly brought before the annual meeting shall not be conducted.

(ii) Advance Notice of Director Nominations at Annual Meetings. Notwithstanding anything in these bylaws to the contrary, only persons who are nominated in accordance with the procedures set forth in this Section 2.4(ii) shall be eligible for election or re-election as directors at an annual meeting of stockholders. Nominations of persons for election to the Board shall be made at an annual meeting of stockholders only (A) by or at the direction of the Board or (B) by a stockholder of the Corporation who (1) was a stockholder of record at the time of the giving of the notice required by this Section 2.4(ii), on the record date for the determination of stockholders entitled to notice of the annual meeting and on the record date for the determination of stockholders entitled to vote at the annual meeting and (2) has complied with the notice procedures set forth in this Section 2.4(ii). In addition to any other applicable requirements, for a nomination to be made by a stockholder, the stockholder must have given timely notice thereof in proper written form to the secretary of the Corporation.

(a) To comply with clause (B) of Section 2.4(ii) above, a nomination to be made by a stockholder must set forth all information required under this Section 2.4(ii) and must be received by the secretary of the Corporation at the principal executive offices of the Corporation at the time set forth in, and in accordance with, the final three sentences of Section 2.4(i)(a) above; provided,
however, that in the event that the number of directors to be elected to the Board is increased and there is no Public Announcement naming all of the
nominees for director or specifying the size of the increased board made by the Corporation at least ten (10) days before the last day a stockholder may
deliver a notice of nomination pursuant to the foregoing provisions, a stockholder’s notice required by this Section 2.4(ii) shall also be considered
timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the secretary at the principal
executive offices of the Corporation not later than the close of business on the tenth day following the day on which such Public Announcement is first
made by the Corporation.

(b) To be in proper written form, such stockholder’s notice to the secretary must set forth:

(1) as to each person (a “nominee”) whom the stockholder proposes to nominate for election or re-election as a director:
(A) the name, age, business address and residence address of the nominee, (B) the principal occupation or employment of the nominee, (C) the class and
number of shares of the Corporation that are held of record or are beneficially owned by the nominee and any derivative positions held or beneficially
held by the nominee, (D) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on
behalf of the nominee with respect to any securities of the Corporation, and a description of any other agreement, arrangement or understanding
(including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit
of share price changes for, or to increase or decrease the voting power of the nominee, (E) a description of all arrangements or understandings between
or among the stockholder, any nominee or any other person or persons (naming such person or persons) pursuant to which the nominations are to be
made by the stockholder or concerning the nominee’s potential service as a director, including a description of any compensatory, payment or other
financial agreement, arrangement or understanding involving the nominee and of any compensation or other payment received by or on behalf of the
nominee, in each case in connection with candidacy or service as a director of the Corporation, (F) a written statement executed by the nominee
acknowledging and representing that the nominee intends to serve a full term on the Board if elected and (G) any other information relating to the
nominee that would be required to be disclosed about such nominee if proxies were being solicited for the election of the nominee as a director, or that
is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation the nominee’s written consent to
being named in the proxy statement, if any, as a nominee and to serving as a director if elected); and

(2) as to such stockholder giving notice, (A) the information required to be provided pursuant to clauses (2) through (5) of
Section 2.4(i)(b) above, and the supplement referenced in the second sentence of Section 2.4(i)(b) above (except that the references to “business” in
such clauses shall instead refer to nominations of directors for purposes of this paragraph), and (B) a statement whether either such stockholder or
Stockholder Associated Person will deliver a proxy statement and form of proxy to holders of a number of the Corporation’s voting shares reasonably
believed by such stockholder or Stockholder Associated Person to be necessary to elect such nominee(s) (such information provided and statements
made as required by clauses (A) and (B) above, a “Nominee Solicitation Statement”).

(c) At the request of the Board, any person nominated by a stockholder for election as a director must furnish to the secretary of
the Corporation (1) that information required to be set forth in the stockholder’s notice of nomination of such person as a director as of a date
subsequent to the date on which the notice of such person’s nomination was given and (2) such other information as may reasonably be required by the
Corporation to determine the eligibility of such proposed nominee to
serve as an independent director of the Corporation or that could be material to a reasonable stockholder’s understanding of the independence, or lack thereof, of such nominee; in the absence of the furnishing of such information if requested, such stockholder’s nomination shall not be considered in proper form pursuant to this Section 2.4(ii).

(d) Without exception, no person shall be eligible for election or re-election as a director of the Corporation at an annual meeting of stockholders unless nominated in accordance with the provisions set forth in this Section 2.4(ii). In addition, a nominee shall not be eligible for election or re-election if a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or in any other notice to the Corporation or if the Nominee Solicitation Statement applicable to such nominee or any other relevant notice contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that a nomination was not made in accordance with the provisions prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the annual meeting, and the defective nomination shall be disregarded.

(iii) Advance Notice of Director Nominations for Special Meetings.

(a) For a special meeting of stockholders at which directors are to be elected pursuant to Section 2.3, nominations of persons for election to the Board shall be made only (1) by or at the direction of the Board or (2) by any stockholder of the Corporation who (A) is a stockholder of record at the time of the giving of the notice required by this Section 2.4(iii), on the record date for the determination of stockholders entitled to vote at the special meeting and (B) delivers a timely written notice of the nomination to the secretary of the Corporation that includes the information set forth in Sections 2.4(ii)(b) and (ii)(c) above. To be timely, such notice must be received by the secretary at the principal executive offices of the Corporation not later than the close of business on the later of the 90th day prior to such special meeting or the tenth day following the day on which Public Announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. A person shall not be eligible for election or re-election as a director at a special meeting unless the person is nominated (i) by or at the direction of the Board or (ii) by a stockholder in accordance with the notice procedures set forth in this Section 2.4(ii).

(b) The chairperson of the special meeting shall, if the facts warrant, determine and declare at the meeting that a nomination or business was not made in accordance with the procedures prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the meeting, and the defective nomination or business shall be disregarded.

(iv) Other Requirements and Rights. In addition to the foregoing provisions of this Section 2.4, a stockholder must also comply with all applicable requirements of state law and of the 1934 Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.4, including, with respect to business such stockholder intends to bring before the annual meeting that involves a proposal that such stockholder requests to be included in the Corporation’s proxy statement, the requirements of Rule 14a-8 (or any successor provision) under the 1934 Act. Nothing in this
Section 2.4 shall be deemed to affect any right of the Corporation to omit a proposal from the Corporation’s proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act.

2.5 NOTICE OF STOCKHOLDERS’ MEETINGS

Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the DGCL, the certificate of incorporation or these bylaws, the notice of any meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

2.6 QUORUM

The holders of a majority of the voting power of the capital stock of the Corporation issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. Where a separate vote by a class or series or classes or series is required, a majority of the voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the certificate of incorporation or these bylaws.

If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting, or (ii) the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the original meeting.

2.7 ADJOURNED MEETING; NOTICE

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL and Section 2.11 of these bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.
2.8 CONDUCT OF BUSINESS

The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business and discussion as seem to the chairperson in order. The chairperson of any meeting of stockholders shall have the power to adjourn the meeting to another place, if any, date or time, whether or not a quorum is present. The chairperson of any meeting of stockholders shall be designated by the Board; in the absence of such designation, the chairperson of the board, if any, or the chief executive officer (in the absence of the chairperson of the board), or the president (in the absence of the chairperson of the board and the chief executive officer), or in their absence any other executive officer of the Corporation, shall serve as chairperson of the stockholder meeting.

2.9 VOTING

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation or these bylaws, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

Except as otherwise provided by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange, in all matters other than the election of directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise required by law, the certificate of incorporation or these bylaws, directors shall be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of the voting power of the shares of such class or series or classes or series present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of such class or series or classes or series, except as otherwise provided by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange.

2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to act by written consent, effective upon the closing date of the initial sale of shares of Common Stock in the Corporation’s initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by written consent in lieu of a meeting.

2.11 RECORD DATES

In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which
record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board so fixes a date, such date shall also be the
record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a
later date on or before the date of the meeting shall be the date for making such determination.

If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders
shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day
next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the
meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and
in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for
determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the DGCL and this Section 2.11 at the adjourned
meeting.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of
any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other
lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted,
and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for
any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

2.12 PROXIES

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy
authorized by a document or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy
shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its
face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

A proxy may be in the form of a telegram, cablegram, or other means of electronic transmission (as defined in Section 232 of the DGCL, as it may
be amended from time to time, or any successor provisions thereto) which sets forth or is submitted with information from which it can be determined
that the telegram, cablegram, or other means of electronic transmission was authorized by the person.

2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE

The Corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the
meeting; provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list
shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order, and showing the address of
each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail
addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to
the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information
required to gain access to
such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Corporation’s principal place of business. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

2.14 INSPECTORS OF ELECTION

Before any meeting of stockholders, the Corporation shall appoint an inspector or inspectors of election to act at the meeting or its adjournment. The Corporation may designate one (1) or more persons as alternate inspectors to replace any inspector who fails to act. Such inspectors shall take all actions as contemplated under Section 231 of the DGCL or any successor provision thereto.

The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are multiple inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

ARTICLE III - DIRECTORS

3.1 POWERS

The business and affairs of the Corporation shall be managed by or under the direction of the Board, except as may be otherwise provided in the DGCL or the certificate of incorporation.

3.2 NUMBER OF DIRECTORS

The Board shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of incorporation fixes the number of directors, the number of directors shall be determined from time to time by resolution adopted by a majority of the Whole Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director’s term of office expires.

3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS

Except as provided in Section 3.4 of these bylaws, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director’s successor is elected and qualified or until such director’s earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors.

If so provided in the certificate of incorporation, the directors of the Corporation shall be divided into three classes.
3.4 **RESIGNATION AND VACANCIES**

Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Uncommented continuation:

3.5 **PLACE OF MEETINGS; MEETINGS BY TELEPHONE**

The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board may participate in a meeting of the Board by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.6 **REGULAR MEETINGS**

Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board.

3.7 **SPECIAL MEETINGS; NOTICE**

Special meetings of the Board for any purpose or purposes may be called at any time by the chairperson of the Board, the chief executive officer, the president, the secretary or a majority of the Whole Board.

Notice of the time and place of special meetings shall be:

(i) delivered personally by hand, by courier or by telephone;
(ii) sent by United States first-class mail, postage prepaid;
(iii) sent by facsimile;
(iv) sent by electronic mail; or
directed to each director at that director’s address, telephone number, facsimile number, electronic mail address or other contact for notice by electronic
transmission, as the case may be, as shown on the Corporation’s records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile, (iii) sent by electronic mail or (iv) otherwise
given by electronic transmission, it shall be delivered, sent or otherwise directed to each director, as applicable, at least 24 hours before the time of the
holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the
holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to
be held at the Corporation’s principal executive office) nor the purpose of the meeting, unless required by statute.

3.8 QUORUM; VOTING

At all meetings of the Board, a majority of the Whole Board shall constitute a quorum for the transaction of business. If a quorum is not present at
any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the
meeting, until a quorum is present.

The affirmative vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may
be otherwise specifically provided by statute, the certificate of incorporation or these bylaws.

If the certificate of incorporation provides that one or more directors shall have more or less than one vote per director on any matter, except as
may otherwise be expressly provided herein or therein and denoted with the phrase “Notwithstanding the final paragraph of Section 3.8 of the bylaws,”
or a phrase of similar effect, every reference in these bylaws to a majority or other proportion of the directors shall refer to a majority or other proportion
of the votes of the directors.

3.9 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the
Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in
writing or by electronic transmission. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise,
that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such
instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this Section 3.9 at such effective
time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its
becoming effective.

3.10 FEES AND COMPENSATION OF DIRECTORS

Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board shall have the authority to fix the compensation of
directors.
3.11 REMOVAL OF DIRECTORS

For so long as the directors of the corporation may be divided into classes, any director may be removed from office by the stockholders of the Corporation only for cause.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director’s term of office.

ARTICLE IV - COMMITTEES

4.1 COMMITTEES OF DIRECTORS

The Board may, by resolution passed by a majority of the Whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the Corporation.

4.2 COMMITTEE MINUTES

Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

4.3 MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

(i) Section 3.5 (place of meetings and meetings by telephone);
(ii) Section 3.6 (regular meetings);
(iii) Section 3.7 (special meetings and notice);
(iv) Section 3.8 (quorum; voting);
(v) Section 3.9 (action without a meeting); and
(vi) Section 7.5 (waiver of notice),
with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members. However:

(i) the time and place of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;

(ii) special meetings of committees may also be called by resolution of the Board; and

(iii) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

Any provision in the certificate of incorporation providing that one or more directors shall have more or less than one vote per director on any matter shall apply to voting in any committee or subcommittee, unless otherwise provided in the certificate of incorporation or these bylaws.

4.4 SUBCOMMITTEES

Unless otherwise provided in the certificate of incorporation, these bylaws or the resolutions of the Board designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

ARTICLE V - OFFICERS

5.1 OFFICERS

The officers of the Corporation shall be a president and a secretary. The Corporation may also have, at the discretion of the Board, a chairperson of the Board, a vice chairperson of the Board, a chief executive officer, a chief financial officer or treasurer, one or more vice presidents, one or more assistant vice presidents, one or more assistant treasurers, one or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

5.2 APPOINTMENT OF OFFICERS

The Board shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 of these bylaws, subject to the rights, if any, of an officer under any contract of employment.

5.3 SUBORDINATE OFFICERS

The Board may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers as the business of the Corporation may require. Each of such officers shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine.
5.4 REMOVAL AND RESIGNATION OF OFFICERS

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the Board or, except in the case of an officer chosen by the Board unless as otherwise provided by resolution of the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

5.5 VACANCIES IN OFFICES

Any vacancy occurring in any office of the Corporation shall be filled by the Board or as provided in Section 5.3.

5.6 REPRESENTATION OF SECURITIES OF OTHER ENTITIES

The chairperson of the Board, the chief executive officer, the president, any vice president, the treasurer, the secretary or assistant secretary of this Corporation, or any other person authorized by the Board or the chief executive officer, the president or a vice president, is authorized to vote, represent, and exercise on behalf of this Corporation all rights incident to any and all shares or other securities of any other entity or entities standing in the name of this Corporation, including the right to act by written consent. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.7 AUTHORITY AND DUTIES OF OFFICERS

All officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

ARTICLE VI - STOCK

6.1 STOCK CERTIFICATES; PARTLY PAID SHARES

The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Unless otherwise provided by resolution of the Board, every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Corporation by any two officers of the Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued
by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The Corporation shall not have power to issue a certificate in bearer form.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly-paid shares, or upon the books and records of the Corporation in the case of uncertificated partly-paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully-paid shares, the Corporation shall declare a dividend upon partly-paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

6.2 SPECIAL DESIGNATION ON CERTIFICATES

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this Section 6.2 or Sections 156, 202(a), 218(a) or 364 of the DGCL or with respect to this Section 6.2 a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

6.3 LOST CERTIFICATES

Except as provided in this Section 6.3, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner’s legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

6.4 DIVIDENDS

The Board, subject to any restrictions contained in the certificate of incorporation or applicable law, may declare and pay dividends upon the shares of the Corporation’s capital stock. Dividends may be paid in cash, in property, or in shares of the Corporation’s capital stock, subject to the provisions of the
6.5 TRANSFER OF STOCK

Transfers of record of shares of stock of the Corporation shall be made only upon its books by the holders thereof, in person or by an attorney duly authorized, and, if such stock is certificated, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer.

6.6 STOCK TRANSFER AGREEMENTS

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

6.7 REGISTERED STOCKHOLDERS

The Corporation:

(i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, receive notifications and otherwise exercise all the rights and powers of an owner of such shares and to vote as such owner; and

(ii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII - MANNER OF GIVING NOTICE AND WAIVER

7.1 NOTICE OF STOCKHOLDERS' MEETINGS

Notice of any meeting of stockholders shall be given in the manner set forth in the DGCL.

7.2 NOTICE TO STOCKHOLDERS SHARING AN ADDRESS

Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under the provisions of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any stockholder who fails to object in writing to the Corporation, within 60 days of having been given written notice by the Corporation of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice. This Section 7.2 shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.
7.3 NOTICE TO PERSON WITH WHOM COMMUNICATION IS UNLAWFUL

Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

7.4 WAIVER OF NOTICE

Whenever notice is required to be given under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

ARTICLE VIII - INDEMNIFICATION

8.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN THIRD PARTY PROCEEDINGS

Subject to the other provisions of this Article VIII, the Corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (a “Proceeding”), other than a Proceeding by or in the right of the Corporation, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding 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 Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person’s conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person’s conduct was unlawful.
8.2 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN ACTIONS BY OR IN THE RIGHT OF THE CORPORATION

Subject to the other provisions of this Article VIII, the Corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed Proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection with the defense or settlement of such Proceeding 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 Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

8.3 SUCCESSFUL DEFENSE

To the extent that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any Proceeding described in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith.

8.4 INDEMNIFICATION OF OTHERS

Subject to the other provisions of this Article VIII, the Corporation shall have power to indemnify its employees and agents to the extent not prohibited by the DGCL or other applicable law. The Board shall have the power to delegate to any person or persons identified in subsections (1) through (4) of Section 145(d) of the DGCL the determination of whether employees or agents shall be indemnified.

8.5 ADVANCE PAYMENT OF EXPENSES

Expenses (including attorneys’ fees) actually and reasonably incurred by an officer or director of the Corporation in defending any Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this Article VIII or the DGCL. Such expenses (including attorneys’ fees) actually and reasonably incurred by former directors and officers or other current or former employees and agents of the Corporation or by persons currently or formerly serving at the request of the Corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate. The right to advancement of expenses shall not apply to any claim for which indemnity is excluded pursuant to these bylaws, but shall apply to any Proceeding referenced in Section 8.6(ii) or 8.6(iii) prior to a determination that the person is not entitled to be indemnified by the Corporation.

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Notwithstanding the foregoing, unless otherwise determined pursuant to Section 8.8, no advance shall be made by the Corporation to an officer of the Corporation (except by reason of the fact that such officer is or was a director of the Corporation, in which event this paragraph shall not apply) in any Proceeding if a determination is reasonably and promptly made (i) by a majority vote of the directors who are not parties to such Proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, that facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Corporation.

8.6 LIMITATION ON INDEMNIFICATION

Subject to the requirements in Section 8.3 and the DGCL, the Corporation shall not be obligated to indemnify any person pursuant to this Article VIII in connection with any Proceeding (or any part of any Proceeding):

(i) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(ii) for an accounting or disgorgement of profits pursuant to Section 16(b) of the 1934 Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(iii) for any reimbursement of the Corporation by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the Corporation, as required in each case under the 1934 Act (including pursuant to any settlement arrangements); or

(iv) initiated by such person, including any Proceeding (or any part of any Proceeding) initiated by such person against the Corporation or its directors, officers, employees, agents or other indemnitees, unless (a) the Board authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (b) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law, (c) otherwise required to be made under Section 8.7 or (d) otherwise required by applicable law; or

(v) if prohibited by applicable law.

8.7 DETERMINATION; CLAIM

If a claim for indemnification or advancement of expenses under this Article VIII is not paid in full within 90 days after receipt by the Corporation of the written request therefor, the claimant shall be entitled to an adjudication by a court of competent jurisdiction of their entitlement to such indemnification or advancement of expenses. The Corporation shall indemnify such person against any and all expenses that are actually and reasonably incurred by such person in connection with any action
for indemnification or advancement of expenses from the Corporation under this Article VIII, to the extent such person is successful in such action, and to the extent not prohibited by law. In any such suit, the Corporation shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

8.8 NON-EXCLUSIVITY OF RIGHTS

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation or any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person’s official capacity and as to action in another capacity while holding such office. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

8.9 INSURANCE

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person’s status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of the DGCL.

8.10 SURVIVAL

The rights to indemnification and advancement of expenses conferred by this Article VIII shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

8.11 EFFECT OF REPEAL OR MODIFICATION

A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to the certificate of incorporation or these bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

8.12 CERTAIN DEFINITIONS

For purposes of this Article VIII, references to the “Corporation” shall include, in addition to the resulting Corporation, any constituent Corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent Corporation, or is or was serving at the request of such constituent Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving Corporation as such person would have with respect.
to such constituent Corporation if its separate existence had continued. For purposes of this Article VIII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VIII.

ARTICLE IX - GENERAL MATTERS

9.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

Except as otherwise provided by law, the certificate of incorporation or these bylaws, the Board may authorize any officer or officers, or agent or agents, to enter into any contract or execute any document or instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

9.2 FISCAL YEAR

The fiscal year of the Corporation shall be fixed by resolution of the Board and may be changed by the Board.

9.3 SEAL

The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

9.4 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes a corporation, partnership, joint venture, trust or other enterprise, and a natural person.

ARTICLE X - AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote. However, the Corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.
A bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the Board.

**ARTICLE XI - EXCLUSIVE FORUM**

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action arising pursuant to any provision of the DGCL or the certificate of incorporation or these bylaws (as either may be amended from time to time), or (iv) any action asserting a claim governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which such court determines that there is an indispensable party not subject to the jurisdiction of such court (and the indispensable party does not consent to the personal jurisdiction of such court within ten (10) days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than such court, or for which such court does not have subject matter jurisdiction.

Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XI.
FOURTH AMENDED AND RESTATED INVESTORS’ RIGHTS AGREEMENT

THIS FOURTH AMENDED AND RESTATED INVESTORS’ RIGHTS AGREEMENT (this “Agreement”) is made as of the 10th day of April, 2018, by and among Livongo Health, Inc., a Delaware corporation (the “Company”), and each of the investors listed on Schedule A hereto, each of which is referred to in this Agreement as an “Investor”. Capitalized terms used but not defined in this Agreement shall have the respective meanings ascribed to such terms in the Certificate of Incorporation (as defined below).

RECITALS

WHEREAS, the Company and certain of the Investors are party to that certain Third Amended and Restated Investors’ Rights Agreement, dated as of March 14, 2017 (the “Prior Agreement”), to govern the rights of the Investors to cause the Company to register shares of Common Stock issuable to the Investors, to receive certain information from the Company, and to participate in future equity offerings by the Company, and shall govern certain other matters as set forth in this Agreement.

WHEREAS, the Company and certain Investors are parties to the Series E Preferred Stock Purchase Agreement of even date herewith (the “Purchase Agreement”); and

WHEREAS, in order to induce the Company to enter into the Purchase Agreement and to induce such Investors to invest funds in the Company pursuant to the Purchase Agreement, the Investors and the Company hereby agree to amend and restate the Prior Agreement in its entirety.

NOW, THEREFORE, the parties hereby agree as follows:

A. Waiver. The Investors hereby waive, on behalf of themselves and all other stockholders, any and all participation rights, rights of first offer, rights of first refusal and related notice rights with respect to (i) shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock issued prior to the date hereof, (ii) shares of Series E Preferred Stock sold pursuant to the Purchase Agreement, as may be amended from time to time, and (iii) shares of Common Stock issued or issuable upon conversion of such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, including, without limitation, the right of first offer set forth in Section 4 of the Prior Agreement.

1. Definitions. For purposes of this Agreement:

1.1 “7wire Director” has the meaning assigned to such term in the Voting Agreement.

1.2 “Affiliate” means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including without limitation any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners (or controlling member thereof), managing members (or controlling member thereof) or managers (or controlling member thereof) of, or that shares the same management
company (or controlling member thereof) with, such Person. As used in this definition, “control” (including, with its correlative meanings, “controlling,” “controlled by” and “under common control with”) shall mean possession, directly or indirectly, of power to direct or cause the director of management or policies (whether through ownership of securities, by contract or otherwise).

1.3 “Certificate of Incorporation” means the Company’s Fifth Amended and Restated Certificate of Incorporation, as amended from time to time.

1.4 “Common Requisite Investors” means Major Common Investors holding at least a majority of the outstanding shares of Common Stock then held by all Major Common Investors.

1.5 “Common Stock” means shares of the Company’s common stock, par value $0.001 per share.

1.6 “Conversion Shares” means shares of Common Stock issued or issuable upon the conversion of Preferred Stock.

1.7 “Damages” means any loss, damage, claim or liability (joint or several) to which a party hereto may become subject under the Securities Act, the Exchange Act, or other federal or state law, insofar as such loss, damage, claim or liability (or any action in respect thereof) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement of the Company, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto; (ii) an omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or (iii) any violation or alleged violation by the indemnifying party (or any of its agents or Affiliates) of the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act, or any state securities law.


1.9 “Excluded Registration” means (i) a registration relating to the sale of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, or similar plan; (ii) a registration relating solely to an SEC Rule 145 transaction; (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities; or (iv) a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

1.10 “Form S-1” means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

1.11 “Form S-3” means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC that permits incorporation of substantial information by reference to other documents filed by the Company with the SEC.
1.12 “GAAP” means generally accepted accounting principles in the United States.

1.13 “Holder” means any holder of Registrable Securities who is a party to this Agreement.

1.14 “Immediate Family Member” means a spouse or child (natural or adopted), of a natural person referred to herein.

1.15 “Initiating Holders” means, collectively, Holders who properly initiate a registration request under this Agreement.

1.16 “IPO” means the Company’s first underwritten public offering of its Common Stock under the Securities Act.

1.17 “Key Employee” means and includes the President, chief executive officer, chief financial officer, chief operating officer, chief scientific officer, chief technology officer, vice presidents of operations, research, development, sales or marketing, or any other individual who performs a significant role in the operations of the Company or a subsidiary or in the development or conception of any intellectual property rights of the Company or a subsidiary as may be reasonably designated by the Board of Directors, and shall in any event include Glen Tullman.

1.18 “Lead Series C Investor” means MGHIF or any Affiliate thereof to which it assigns, sells, or otherwise transfers all of its Registrable Securities.

1.19 “Major Common Investor” means any stockholder that, individually or together with such stockholder’s Affiliates, holds at least 8,000,000 shares of the outstanding shares of Common Stock (subject to appropriate adjustment for stock splits, stock dividends, combinations, and other recapitalizations).

1.20 “Major Investor” means any Investor that, individually or together with such Investor’s Affiliates, holds at least (a) 2,400,000 shares of Registrable Securities or (b) at least 2,200,000 shares of Series D Preferred Stock (in each case as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof).

1.21 “MGHIF” means Merck Global Health Innovation Fund, LLC.

1.22 “New Securities” means, collectively, equity securities of the Company, whether or not currently authorized, as well as rights, options, or warrants to purchase such equity securities, or securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for such equity securities.

1.23 “Person” means any individual, corporation, partnership, trust, limited liability company, association or other entity.

1.24 “Preferred Director” has the meaning assigned to such term in the Certificate of Incorporation.
1.25 “Preferred Stock” means the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock and the Series E Preferred Stock, collectively.

1.26 “Registrable Securities” means: (i) any Common Stock held by an Investor, including Conversion Shares; (ii) any Common Stock, or any Common Stock issued or issuable (directly or indirectly) upon conversion and/or exercise of any other securities of the Company, in each case acquired by the Investors after the date hereof; and (iii) any Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right, or other security that is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares referenced in clauses (i) and (ii) above; excluding, however, (x) in all cases, any Registrable Securities sold by a Person in a transaction in which the applicable rights under this Agreement are not assigned pursuant to Section 6.1, and (y) for purposes of Section 2, any shares for which registration rights have terminated pursuant to Section 2.13 of this Agreement.

1.27 “Registrable Securities then outstanding” means the number of shares determined by adding the number of shares of outstanding Common Stock that are Registrable Securities and the number of shares of Common Stock issuable (directly or indirectly) pursuant to then exercisable, convertible and/or exchangeable securities that are Registrable Securities.

1.28 “Restricted Securities” means the securities of the Company required to bear the legend set forth in Section 2.12(b) hereof.

1.29 “Requisite Investors” means Investors holding at least seventy-five (75%) percent of the Registrable Securities then outstanding, voting as a single class.

1.30 “Right of First Refusal and Co-Sale Agreement” means that certain Fourth Amended and Restated Right of First Refusal and Co-Sale Agreement, dated as of the date hereof, by and among the Company, the Investors and the other stockholders of the Company party thereto, as may be amended from time to time.

1.31 “SEC” means the United States Securities and Exchange Commission.

1.32 “SEC Rule 144” means Rule 144 promulgated by the SEC under the Securities Act.

1.33 “SEC Rule 145” means Rule 145 promulgated by the SEC under the Securities Act.

1.34 “Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

1.35 “Selling Expenses” means all underwriting discounts, selling commissions, and stock transfer taxes applicable to the sale of Registrable Securities, and fees and disbursements of counsel for any Holder, except for the fees and disbursements of the Selling Holder Counsel borne and paid by the Company as provided in Section 2.6.
1.36 “Series A Preferred Stock” means shares of the Company’s Series A Preferred Stock, par value $0.001 per share.

1.37 “Series B Preferred Stock” means shares of the Company’s Series B Preferred Stock, par value $0.001 per share.

1.38 “Series C Preferred Stock” means shares of the Company’s Series C Preferred Stock, par value $0.001 per share.

1.39 “Series D Preferred Stock” means shares of the Company’s Series D Preferred Stock, par value $0.001 per share.

1.40 “Series E Preferred Stock” means shares of the Company’s Series E Preferred Stock, par value $0.001 per share.

1.41 “Voting Agreement” means that certain Fourth Amended and Restated Voting Agreement, dated as of the date hereof, by and among the Company, the Investors and the other stockholders of the Company party thereto, as may be amended from time to time.

2. Registration Rights. The Company covenants and agrees as follows:

2.1 Demand Registration.

(a) Form S-1 Demand. If at any time after the earlier of (i) five (5) years after the date of this Agreement or (ii) one hundred eighty (180) days after the effective date of the registration statement for the IPO, the Company receives a request from the Requisite Investors that the Company file a Form S-1 registration statement with respect to at least twenty five percent (25%) of the Registrable Securities then outstanding (or a lesser percent if the anticipated aggregate offering price, net of Selling Expenses, would exceed $20 million), then the Company shall (i) within ten (10) days after the date such request is given, give notice thereof (the “Demand Notice”) to all Holders other than the Initiating Holders; (ii) as soon as practicable, and in any event within sixty (60) days after the date such request is given by the Initiating Holders, file a Form S-1 registration statement under the Securities Act covering all Registrable Securities that the Initiating Holders requested to be registered and any additional Registrable Securities requested to be included in such registration by any other Holder, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given; and (iii) use its reasonable best efforts to cause such registration statement to be declared effective by the SEC as soon as possible, and in each case, subject to the limitations of Section 2.1(c) and Section 2.3.

(b) Form S-3 Demand. If at any time when it is eligible to use a Form S-3 registration statement, the Company receives a request from Holders of at least fifteen percent (15%) of the Registrable Securities then outstanding that the Company file a Form S-3 registration statement with respect to outstanding Registrable Securities of such Holders having an anticipated aggregate offering price, net of Selling Expenses, of at least $3 million, then the Company shall (i) within ten (10) days after the date such request is given, give a Demand Notice to all Holders other than the Initiating Holders; and (ii) as soon as practicable, and in any event within forty-five (45) days after the date such request is given by the Initiating Holders, file a
Form S-3 registration statement under the Securities Act covering all Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Section 2.1(c) and Section 2.3.

(c) Notwithstanding the foregoing obligations, if the Company furnishes to Holders requesting a registration pursuant to this Section 2.1 a certificate signed by the Company’s chief executive officer stating that in the good faith judgment of the Company’s Board of Directors it would be materially detrimental to the Company and its stockholders for such registration statement to be filed and it is therefore necessary to defer the filing of such registration statement, then the Company shall have the right to defer taking action with respect to such filing, and any time periods with respect to filing or effectiveness thereof shall be tolled correspondingly, for a period of not more than ninety (90) days after the request of the Initiating Holders is given; provided, however, that the Company may not invoke this right more than once in any twelve (12) month period; and provided further that the Company shall not register any securities for its own account or that of any other stockholder during such ninety (90) day period other than an Excluded Registration.

(d) The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Section 2.1(a) (i) during the period that is sixty (60) days before the Company’s good faith estimate of the date of filing of, and ending on a date that is one hundred eighty (180) days after the effective date of, a Company-initiated registration, provided, that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; (ii) after the Company has effected two registrations pursuant to Section 2.1(a); or (iii) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 2.1(b). The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Section 2.1(b) (i) during the period that is thirty (30) days before the Company’s good faith estimate of the date of filing of, and ending on a date that is ninety (90) days after the effective date of, a Company-initiated registration, provided, that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; or (ii) if the Company has effected two registrations pursuant to Section 2.1(b) within the twelve (12) month period immediately preceding the date of such request. A registration shall not be counted as “effected” for purposes of this Section 2.1(d) until such time as the applicable registration statement has been declared effective by the SEC, unless the Initiating Holders withdraw their request for such registration, elect not to pay the registration expenses therefor, and forfeit their right to one demand registration statement pursuant to Section 2.6, in which case such withdrawn registration statement shall be counted as “effected” for purposes of this Section 2.1(d).

2.2 Company Registration. If the Company proposes to register (including, for this purpose, a registration effected by the Company for stockholders other than the Holders) any of its Common Stock under the Securities Act in connection with the public offering of such securities solely for cash (other than in an Excluded Registration), the Company shall, at such time, promptly give each Holder notice of such registration. Upon the request of each Holder given within twenty (20) days after such notice is given by the Company, the Company shall, subject to the provisions of Section 2.3, cause to be registered all of the Registrable Securities that each such Holder has
2.2 Termination of Registrations

The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.2 before the effective date of such registration, whether or not any Holder has elected to include Registrable Securities in such registration. The expenses (other than Selling Expenses) of such withdrawn registration shall be borne by the Company in accordance with Section 2.6.

2.3 Underwriting Requirements

(a) If, pursuant to Section 2.1, the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Section 2.1, and the Company shall include such information in the Demand Notice. The underwriter(s) will be selected by the Company and shall be reasonably acceptable to a majority in interest of the Initiating Holders. In such event, the right of any Holder to include such Holder’s Registrable Securities in such registration shall be conditioned upon such Holder’s participation in such underwriting and the inclusion of such Holder’s Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 2.4(e)) enter into an underwriting agreement in customary form with the underwriter(s) selected for such underwriting. Notwithstanding any other provision of this Section 2.3, if the managing underwriters advise the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities that otherwise would be underwritten pursuant hereto, and the number of Registrable Securities that may be included in the underwriting shall be allocated among such Holders of Registrable Securities, including the Initiating Holders, in proportion (as nearly as practicable) to the number of Registrable Securities owned by each Holder or in such other proportion as shall mutually be agreed to by all such selling Holders; provided, however, that the number of Registrable Securities held by the Holders to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest 100 shares.

(b) In connection with any offering involving an underwriting of shares of the Company’s capital stock pursuant to Section 2.2, the Company shall not be required to include any of the Holders’ Registrable Securities in such underwriting unless the Holders accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company. If the total number of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the number of securities to be sold (other than by the Company) that the underwriters in their reasonable discretion determine is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters and the Company in their sole discretion determine will not jeopardize the success of the offering. If the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such offering, then the Registrable Securities that are included in such offering shall be allocated among the selling Holders in proportion (as nearly as practicable to) the number of Registrable Securities owned by
each selling Holder or in such other proportions as shall mutually be agreed to by all such selling Holders. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest 100 shares. Notwithstanding the foregoing, in no event shall (i) the number of Registrable Securities included in the offering be reduced unless all other securities (other than securities to be sold by the Company) are first entirely excluded from the offering or (ii) the number of Registrable Securities included in the offering be reduced below thirty percent (30%) of the total number of securities included in such offering, unless such offering is the IPO, in which case the selling Holders may be excluded further if the underwriters make the determination described above in this Section 2.3(b) and no other stockholder’s securities are included in such offering. For purposes of the provision in this Section 2.3(b) concerning apportionment, for any selling Holder that is a partnership, limited liability company, or corporation, the partners, members, retired partners, retired members, stockholders, and Affiliates of such Holder, or the estates and Immediate Family Members of any such partners, retired partners, members, and retired members and any trusts for the benefit of any of the foregoing Persons, shall be deemed to be a single “selling Holder,” and any pro rata reduction with respect to such “selling Holder” shall be based upon the aggregate number of Registrable Securities owned by all Persons included in such “selling Holder,” as defined in this sentence.

(c) For purposes of Section 2.1, a registration shall not be counted as “effected” if, as a result of an exercise of the underwriter’s cutback provisions in Section 2.3(a), fewer than one-third (1/3) of the total number of Registrable Securities that Holders have requested to be included in such registration statement are actually included.

2.4 Obligations of the Company. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective as promptly as practicable and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or, if earlier, until the distribution contemplated in the registration statement has been completed; provided, however, that (i) such one hundred twenty (120) day period shall be extended for a period of time equal to the period the Holder refrains, at the request of an underwriter of Common Stock (or other securities) of the Company, from selling any securities included in such registration, and (ii) in the case of any registration of Registrable Securities on Form S-3 that are intended to be offered on a continuous or delayed basis, subject to compliance with applicable SEC rules, such one hundred twenty (120) day period shall be extended for up to one hundred eighty (180) days, if necessary, to keep the registration statement effective until all such Registrable Securities are sold;

(b) prepare and file with the SEC such amendments and supplements to such registration statement, and the prospectus used in connection with such registration statement, as may be necessary to comply with the Securities Act in order to enable the disposition of all securities covered by such registration statement;
(c) furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, as required by the Securities Act, and such other documents as the Holders may reasonably request in order to facilitate their disposition of their Registrable Securities;

(d) use its commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue-sky laws of such jurisdictions as shall be reasonably requested by the selling Holders; provided that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(e) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriter(s) of such offering;

(f) use its commercially reasonable efforts to cause all such Registrable Securities covered by such registration statement to be listed on a national securities exchange or trading system and each securities exchange and trading system (if any) on which similar securities issued by the Company are then listed;

(g) provide a transfer agent and registrar for all Registrable Securities registered pursuant to this Agreement and provide a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) promptly make available for inspection by the selling Holders, any managing underwriters participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the selling Holders, all financial and other records, pertinent corporate documents, and properties of the Company, and cause the Company’s officers, directors, employees, and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such registration statement and to conduct appropriate due diligence in connection therewith;

(i) notify each selling Holder, promptly after the Company receives notice thereof, of the time when such registration statement has been declared effective or a supplement to any prospectus forming a part of such registration statement has been filed; and

(j) after such registration statement becomes effective, notify each selling Holder of any request by the SEC that the Company amend or supplement such registration statement or prospectus.

In addition, the Company shall ensure that, at all times after any registration statement covering a public offering of securities of the Company under the Securities Act shall have become effective, its insider trading policy shall provide that the Company’s directors may implement a trading program under Rule 10b5-1 of the Exchange Act.
2.5 Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as is reasonably required to effect the registration of such Holder’s Registrable Securities.

2.6 Expenses of Registration. All expenses (other than Selling Expenses) incurred in connection with registrations, filings, or qualifications pursuant to Section 2, including all registration, filing, and qualification fees; printers’ and accounting fees; fees and disbursements of counsel for the Company; and the reasonable fees and disbursements, not to exceed $50,000, of one counsel for the selling Holders (“Selling Holder Counsel”), shall be borne and paid by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 2.1 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all selling Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to one registration pursuant to Section 2.1(a) or Section 2.1(b), as the case may be; provided further that if, at the time of such withdrawal, the Holders shall have learned of a material adverse change in the condition, business, or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness after learning of such information then the Holders shall not be required to pay any of such expenses and shall not forfeit their right to one registration pursuant to Section 2.1(a) or Section 2.1(b). All Selling Expenses relating to Registrable Securities registered pursuant to this Section 2 shall be borne and paid by the Holders pro rata on the basis of the number of Registrable Securities registered on their behalf.

2.7 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration pursuant to this Agreement as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.8 Indemnification. If any Registrable Securities are included in a registration statement under this Section 2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each selling Holder, and the partners, members, managers, officers, directors, and stockholders of each such Holder; legal counsel and accountants for each such Holder; any underwriter (as defined in the Securities Act) for each such Holder; and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any Damages, and the Company will pay to each such Holder, underwriter, controlling Person, or other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Section 2.8(a) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, delayed or conditioned, nor shall the Company be liable for any Damages to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of any such Holder, underwriter, controlling Person, or other aforementioned Person expressly for use in connection with such registration.
(b) To the extent permitted by law, each selling Holder, severally and not jointly, will indemnify and hold harmless the Company, and each of its directors, each of its officers who has signed the registration statement, each Person (if any), who controls the Company within the meaning of the Securities Act, legal counsel and accountants for the Company, any underwriter (as defined in the Securities Act), any other Holder selling securities in such registration statement, and any controlling Person of any such underwriter or other Holder, against any Damages, in each case only to the extent that such Damages arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of such selling Holder expressly for use in connection with such registration; and each such selling Holder will pay to the Company and each other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which such Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Section 2.8(b) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; and provided further that in no event shall the aggregate amounts payable by any Holder by way of indemnity or contribution under Sections 2.8(b) and 2.8(d) exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of fraud or willful misconduct by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 2.8 of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 2.8, give the indemnifying party notice of the commencement thereof. The indemnifying party shall have the right to participate in such action and, to the extent the indemnifying party so desires, participate jointly with any other indemnifying party to which notice has been given, and to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such action. The failure to give notice to the indemnifying party within a reasonable time of the commencement of any such action shall relieve such indemnifying party of any liability to the indemnified party under this Section 2.8, to the extent that such failure materially prejudices the indemnifying party’s ability to defend such action. The failure to give notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 2.8.
(d) To provide for just and equitable contribution to joint liability under the Securities Act in any case in which either (i) any party otherwise entitled to indemnification hereunder makes a claim for indemnification pursuant to this Section 2.8 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case, notwithstanding the fact that this Section 2.8 provides for indemnification in such case, or (ii) contribution under the Securities Act may be required on the part of any party hereto for which indemnification is provided under this Section 2.8, then, and in each such case, such parties will contribute to the aggregate losses, claims, damages, liabilities, or expenses to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of each of the indemnifying party and the indemnified party in connection with the statements, omissions, or other actions that resulted in such loss, claim, damage, liability, or expense, as well as to reflect any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or allegedly untrue statement of a material fact, or the omission or alleged omission of a material fact, relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission; provided, however, that, in any such case, (x) no Holder will be required to contribute any amount in excess of the public offering price of all such Registrable Securities offered and sold by such Holder pursuant to such registration statement, and (y) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation; and provided further that in no event shall a Holder’s liability pursuant to this Section 2.8(d), when combined with the amounts paid or payable by such Holder pursuant to Section 2.8(b), exceed the proceeds from the offering received by such Holder (net of any Selling Expenses) paid by such Holder, except in the case of willful misconduct or fraud by such Holder.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) Unless otherwise superseded by an underwriting agreement entered into in connection with the underwritten public offering, the obligations of the Company and Holders under this Section 2.8 shall survive the completion of any offering of Registrable Securities in a registration under this Section 2, and otherwise shall survive the termination of this Agreement.

2.9 Reports Under Exchange Act. With a view to making available to the Holders the benefits of SEC Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company shall:

(a) make and keep available adequate current public information, as those terms are understood and defined in SEC Rule 144, at all times after the effective date of the registration statement filed by the Company for the IPO;

(b) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after the Company has become subject to such reporting requirements); and
(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) to the extent accurate, a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the registration statement filed by the Company for the IPO), the Securities Act, and the Exchange Act (at any time after the Company has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after the Company so qualifies); (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company; and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration (at any time after the Company has become subject to the reporting requirements under the Exchange Act) or pursuant to Form S-3 (at any time after the Company so qualifies to use such form).

2.10 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Requisite Investors, enter into any agreement with any holder or prospective holder of any securities of the Company that would allow such holder or prospective holder to include such securities in any registration unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such securities will not reduce the number of the Registrable Securities of the Holders that are included; provided that this limitation shall not apply to any additional Investor who becomes a party to this Agreement in accordance with Section 6.9.

2.11 “Market Stand-off” Agreement. Each Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the IPO and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days; provided, however, that such period may be extended by up to an additional thirty-four (34) days to the extent requested by the managing underwriter in order to address the requirements of FINRA Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto, in situations in which (x) the Company issues an earnings release or material news or a material event relating to the Company occurs during the last seventeen (17) days of the initial lockup period or (y) prior to the expiration of the initial lockup period the Company announces that it will release earnings results during the 16-day period beginning on the last day of the initial lockup period), (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right, or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Common Stock held immediately prior to the effectiveness of the registration statement for the IPO, or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (i) or (ii) of this Section 2.11 is to be settled by delivery of Common Stock or other securities, in cash, or otherwise. The foregoing provisions of this Section 2.11 shall apply only to the IPO, shall not apply to the
sale of any shares to an underwriter pursuant to an underwriting agreement, and shall only be applicable to the Holders if all officers and directors are subject to similar agreements and the Company uses reasonable efforts to obtain a similar agreement from all stockholders individually owning more than one percent (1%) of the Company’s outstanding Common Stock (after giving effect to conversion into Common Stock of all outstanding Preferred Stock). The underwriters in connection with the IPO are intended third-party beneficiaries of this Section 2.11 and shall have the right, power, and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with the IPO that are consistent with this Section 2.11 or that are necessary to give further effect thereto.

2.12 Restrictions on Transfer.

(a) The Preferred Stock and the Registrable Securities shall not be sold, pledged, or otherwise transferred, and the Company shall not recognize and shall issue stop-transfer instructions to its transfer agent with respect to any such sale, pledge, or transfer, except upon the conditions specified in this Agreement, which conditions are intended to ensure compliance with the provisions of the Securities Act. A transferring Holder will cause any proposed purchaser, pledgee, or transferee of the Preferred Stock and the Registrable Securities held by such Holder to agree to take and hold such securities subject to the provisions and upon the conditions specified in this Agreement.

(b) Each certificate, instrument or book entry representing (i) the Preferred Stock, (ii) the Registrable Securities, and (iii) any other securities issued in respect of the securities referenced in clauses (i) and (ii), upon any stock split, stock dividend, recapitalization, merger, consolidation, or similar event, shall (unless otherwise permitted by the provisions of Section 2.12(c)) be stamped or otherwise notated with a legend substantially in the following form:

THE SECURITIES REPRESENTED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. SUCH SHARES MAY NOT BE SOLD, PLEDGED, OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR A VALID EXEMPTION FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT.

THE SECURITIES REPRESENTED HEREBY MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

The Holders consent to the Company making a notation in its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer set forth in this Section 2.12.
(c) The holder of such Restricted Securities, by acceptance of ownership thereof, agrees to comply in all respects with the provisions of this Section 2. Before any proposed sale, pledge, or transfer of any Restricted Securities, unless there is in effect a registration statement under the Securities Act covering the proposed transaction, the Holder thereof shall give notice to the Company of such Holder’s intention to effect such sale, pledge, or transfer. Each such notice shall describe the manner and circumstances of the proposed sale, pledge, or transfer in sufficient detail and, if reasonably requested by the Company, shall be accompanied at such Holder’s expense by either (i) a written opinion of legal counsel who shall, and whose legal opinion shall, be reasonably satisfactory to the Company, addressed to the Company, to the effect that the proposed transaction may be effected without registration under the Securities Act; (ii) a “no action” letter from the SEC to the effect that the proposed sale, pledge, or transfer of such Restricted Securities without registration will not result in a recommendation by the staff of the SEC that action be taken with respect thereto; or (iii) any other evidence reasonably satisfactory to counsel to the Company to the effect that the proposed sale, pledge, or transfer of the Restricted Securities may be effected without registration under the Securities Act, whereupon the Holder of such Restricted Securities shall be entitled to sell, pledge, or transfer such Restricted Securities in accordance with the terms of the notice given by the Holder to the Company. The Company will not require such a legal opinion or “no action” letter (x) in any transaction in compliance with SEC Rule 144 or (y) in any transaction in which such Holder distributes, sells, pledges or transfers Restricted Securities to (A) an Affiliate of such Holder or (B) the partners, members, former partners or former members of such Holder in accordance with their respective partnership, membership or limited liability company interests in such Holder, in each of the foregoing cases, for no consideration; provided that each transferee agrees in writing to be subject to the terms of this Section 2.12. Each certificate, instrument or book entry evidencing the Restricted Securities transferred as above provided shall bear, except if such transfer is made pursuant to SEC Rule 144, the appropriate restrictive legend set forth in Section 2.12(b), except that such certificate, instrument or book entry shall not bear such restrictive legend if, in the opinion of counsel for such Holder and the Company, such legend is not required in order to establish compliance with any provisions of the Securities Act.

2.13 Termination of Registration Rights. The right of any Holder to request registration or inclusion of Registrable Securities in any registration pursuant to Section 2.1 or Section 2.2 shall terminate upon the first to occur of:

(a) the closing of a Deemed Liquidation Event, as such term is defined in the Certificate of Incorporation; and

(b) the fifth anniversary of the IPO.

3. Information and Inspection Rights.

3.1 Delivery of Financial Statements. The Company shall deliver to each Major Investor:

(a) as soon as practicable, but in any event within one hundred twenty (120) days after the end of each fiscal year of the Company, (i) a balance sheet as of the end of such year, (ii) statements of income and of cash flows for such year, and a comparison between (x) the actual amounts as of and for such fiscal year and (y) the comparable amounts for the prior year and as included in the Budget (as defined below) for such year, with an explanation of any
material differences between such amounts and a schedule as to the sources and applications of funds for such year, and (iii) a statement of stockholders’ equity as of the end of such year, all such financial statements audited and certified by independent public accountants of nationally recognized standing selected by the Company;

(b) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three (3) quarters of each fiscal year of the Company, unaudited statements of income and of cash flows for such fiscal quarter, an unaudited balance sheet and a statement of stockholders’ equity as of the end of such fiscal quarter, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments and (ii) not contain all notes thereto that may be required in accordance with GAAP);

(c) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three (3) quarters of each fiscal year of the Company, a statement showing the number of shares of each class and series of capital stock and securities convertible into or exercisable for shares of capital stock outstanding at the end of the period, the Common Stock issuable upon conversion or exercise of any outstanding securities convertible or exercisable for Common Stock and the exchange ratio or exercise price applicable thereto, and the number of shares of issued stock options and stock options not yet issued but reserved for issuance, if any, all in sufficient detail as to permit the Major Investors to calculate their respective percentage equity ownership in the Company, and certified by the chief financial officer or chief executive officer of the Company as being true, complete, and correct;

(d) to the extent the Company in its discretion has prepared them, then, as soon as practicable, but in any event within forty-five (45) days of the end of each month, such monthly financial statements as the Company shall have prepared;

(e) as soon as practicable, but in any event no later than thirty (30) days prior to the beginning of each fiscal year, a budget and business plan for the next fiscal year (collectively, the “Budget”), approved by the Board of Directors and prepared on a monthly basis, including balance sheets, income statements, and statements of cash flow for such months and, promptly after prepared, any other budgets or revised budgets prepared by the Company;

(f) with respect to the financial statements called for in Section 3.1(a) and Section 3.1(b), an instrument executed by the chief financial officer and chief executive officer on behalf of the Company certifying that such financial statements were prepared in accordance with GAAP consistently applied with prior practice for earlier periods (except as otherwise set forth in Section 3.1(b)) and fairly present the financial condition of the Company and its results of operation for the periods specified therein; and

(g) such other information relating to the financial condition, business, prospects, or corporate affairs of the Company as any Major Investor may from time to time reasonably request; provided, however, that the Company shall not be obligated under this Section 3.1 to provide information (i) that the Company reasonably determines in good faith to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) or (ii) the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel, as determined by the Company in its good faith sole discretion.
If, for any period, the Company has any subsidiary whose accounts are consolidated with those of the Company, then in respect of such period the financial statements delivered pursuant to the foregoing sections shall be the consolidated and consolidating financial statements of the Company and all such consolidated subsidiaries.

Notwithstanding anything else in this Section 3.1 to the contrary, the Company may cease providing the information set forth in this Section 3.1 during the period starting with the date sixty (60) days before the Company’s good-faith estimate of the date of filing of a registration statement if it reasonably concludes it must do so to comply with the SEC rules applicable to such registration statement and related offering; provided that the Company’s covenants under this Section 3.1 shall be reinstated at such time as the Company is no longer actively employing its commercially reasonable best efforts to cause such registration statement to become effective.

3.2 Inspection. The Company shall permit each Major Investor (provided that the Board of Directors has not reasonably determined that such Major Investor is a competitor of the Company, and provided, further, that MGHIF (or any Affiliate thereof who becomes the Lead Series C Investor and whose business includes making investments in healthcare or life sciences technology) shall not be deemed a competitor of the Company for such purpose), at such Major Investor’s expense, to visit and inspect the Company’s properties; examine its books of account and records; and discuss the Company’s affairs, finances, and accounts with its officers, during normal business hours of the Company as may be reasonably requested by the Major Investor; provided, however, that the Company shall not be obligated pursuant to this Section 3.2 to provide access to any information that it reasonably and in good faith considers to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) or the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

3.3 Termination of Information Rights. The covenants set forth in Section 3.1 and 3.2 shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon a Deemed Liquidation Event, as such term is defined in the Certificate of Incorporation, whichever event occurs first.

3.4 Confidentiality. Each Investor agrees that such Investor will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company) any confidential information obtained from the Company pursuant to the terms of this Agreement (including notice of the Company’s intention to file a registration statement), unless such confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Section 3.4 by such Investor), (b) is or has been independently developed or conceived by the Investor without use of the Company’s confidential information, or (a) is or has been made known or disclosed to the Investor by a third party without a breach of any obligation of confidentiality such third party may have to the Company; provided, however, that an Investor may disclose confidential information (i) to its attorneys, accountants, consultants, and
other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company; (ii) after approval of the Company’s Board of Directors (which approval shall not be unreasonably withheld, conditioned or delayed), to any prospective purchaser of any Registrable Securities from such Investor, if such prospective purchaser agrees to be bound by the provisions of this Section 3.4; (iii) to any Affiliate, partner, member, stockholder, or wholly owned subsidiary of such Investor in the ordinary course of business, provided that such Investor informs such Person that such information is confidential and requires such Person to maintain the confidentiality of such information; or (iv) as may otherwise be required by law (or as requested by foreign regulatory authority having jurisdiction over such Investor or its Affiliates, including any stock exchange to which the Investor or its Affiliates is subject or submits), provided that the Investor promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure.

3.5 Residuals. The non-use restrictions set forth in the foregoing Section 3.4 shall not apply to an Investor’s use of ideas, concepts and know-how of a nature that is broadly applicable to companies other than the Company or to the Company’s industry in general, which ideas, concepts and know-how are known by the Investor prior to, or developed or learned by the Investor in the course of the Investor’s review of the confidential information disclosed hereunder and mentally retained in the unaided memory of the Investor (and not intentionally memorized for the purpose of later recording or use).

4. Rights to Future Stock Issuances.

4.1 Right of First Offer. Subject to the terms and conditions of this Section 4 and applicable securities laws, if the Company proposes to offer or sell any New Securities, the Company shall first offer such New Securities to each Major Investor that is an “accredited investor” (as defined Rule 501(a) under the Securities Act). A Major Investor shall be entitled to apportion the right of first offer hereby granted to it among itself and its Affiliates in such proportions as it deems appropriate. For the avoidance of doubt, a Major Investor that is not an “accredited investor” shall not have any right to be offered or to purchase New Securities from the Company pursuant to this Section 4.

(a) The Company shall give notice (the “Offer Notice”) to each Major Investor, stating (i) its bona fide intention to offer such New Securities, (ii) the number of such New Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such New Securities.

(b) By notification to the Company within twenty (20) days after the Offer Notice is given, each Major Investor may elect to purchase or otherwise acquire, at the price and on the terms specified in the Offer Notice, up to that portion of such New Securities which equals the product of (x) the aggregate number of New Securities, times, (y) a fraction, the numerator of which is the aggregate number of Common Stock then held by such Major Investor (including Conversion Shares) and the denominator of which is the total number of shares of Common Stock of the Company then issued and outstanding (assuming the conversion into Common Stock of all outstanding shares of Preferred Stock and any other securities convertible into Common Stock, if any, and the exercise of all outstanding stock options and warrants) (the “Pro Rata Share”). At the expiration of such twenty (20) day period, the Company shall promptly
give written notice to each Major Investor that elects to purchase or acquire all the shares available to it (each, a “Fully Exercising Investor”) of any other Major Investor's failure to do likewise. During the ten (10) day period commencing after the Company has given such notice, each Fully Exercising Investor may, by giving written notice to the Company, elect to purchase or acquire, in addition to the number of shares specified above, up to that portion of the New Securities for which Major Investors were entitled to subscribe but that were not subscribed for by the Major Investors times, (y) a fraction, the numerator of which is the aggregate number of shares of Common Stock then held by such Fully Exercising Investor (including Conversion Shares) and the denominator of which is the total number of shares of Common Stock (including Conversion Shares) held by all Fully Exercising Investors who wish to purchase such unsubscribed shares. The closing of any sale pursuant to this Section 4.1(b) shall occur within the later of ninety (90) days of the date that the Offer Notice is given and the date of initial sale of New Securities pursuant to Section 4.1(c).

(c) If all New Securities referred to in the Offer Notice are not elected to be purchased or acquired as provided in Section 4.1(b), the Company may, during the ninety (90) day period following the expiration of the periods provided in Section 4.1(b), offer and sell the remaining unsubscribed portion of such New Securities to any Person or Persons at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Offer Notice. If the Company does not enter into an agreement for the sale of the New Securities within such period, or if such agreement is not consummated within thirty (30) days of the execution thereof, the rights provided hereunder shall be deemed to be revived and such New Securities shall not be offered unless first reoffered to the Major Investors in accordance with this Section 4.1.

(d) The right of first offer in this Section 4.1 shall not be applicable to (i) Exempted Securities (as defined in the Certificate of Incorporation); or (ii) shares of Common Stock issued in the IPO.

(e) Notwithstanding any provision hereof to the contrary, in lieu of complying with the provisions of this Section 4.1 in advance of any issuance of New Securities to any Major Investor, the Company may elect to give notice to the Major Investors within thirty days after the issuance of New Securities. Such notice shall describe the type, price, and terms of the issuance of New Securities to Persons that are not Major Investors. Each Major Investor shall have twenty (20) days from the date notice is given to elect to purchase up to the number of New Securities that would, if purchased by such Major Investor, maintain such Major Investor’s percentage ownership position, calculated as set forth in Section 4.1(b), before giving effect to the issuance of such New Securities. In the event one or more Major Investor declines to purchase the number of New Securities that would maintain such Major Investors’ percentage ownership positions, the New Securities so declined shall be offered to the fully participating Major Investors on the basis provided in Section 4.1(b). The closing of such sale shall occur within sixty (60) days of the date notice is given to the Major Investors.

4.2 Termination. The covenants set forth in Section 4.1 shall terminate and be of no further force or effect (i) upon the closing of a Deemed Liquidation Event, as such term is defined in the Certificate of Incorporation, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon consummation of the IPO, whichever event occurs first.
5. Additional Covenants

5.1 Insurance. The Company shall use its commercially reasonable efforts to obtain within ninety (90) days of the date hereof and/or maintain, as applicable, from financially sound and reputable insurers: (i) Directors and Officers liability insurance, in the amount of $3 million and on other terms and conditions satisfactory to the Board of Directors (which must include at least two (2) Preferred Directors), and (ii) term “key-person” insurance on the life of Glen Tullman, in the amount of $3 million and on other terms and conditions satisfactory to the Board of Directors (which must include at least two (2) Preferred Directors), and the Company will use commercially reasonable efforts to cause such insurance policies to be maintained until such time as the Board of Directors, including at least two (2) Preferred Directors, determines that such insurance should be discontinued. The key-person policy shall name the Company as loss payee, and neither policy shall be cancelable by the Company without prior approval by the Board of Directors, including at least two (2) Preferred Directors.

5.2 Employee Agreements. The Company will cause (i) each person now or hereafter employed by it or by any subsidiary (or engaged by the Company or any subsidiary as a consultant/independent contractor) with access to confidential information and/or trade secrets to enter into a nondisclosure and proprietary rights assignment agreement in form and substance satisfactory to the Board of Directors (including at least two (2) Preferred Directors) and (ii) each Key Employee to enter into a one (1) year nonsolicitation agreement, substantially in the form approved by the Board of Directors (including at least two (2) Preferred Directors). In addition, the Company shall not, and shall cause its subsidiaries not to, amend, modify, terminate, waive, or otherwise alter, in whole or in part, any of the above-referenced agreements or any restricted stock agreement between the Company and any employee, without the consent of the Board of Directors (including at least two (2) Preferred Directors).

5.3 Employee Stock. Unless otherwise approved by the Board of Directors, all future employees, directors and consultants of the Company who purchase, receive options to purchase, or receive awards of shares of the Company’s capital stock after the date hereof shall be required to execute restricted stock or option agreements, as applicable, providing (i) for vesting of shares over a four (4) year period, with the first twenty five percent (25%) of such shares vesting following twelve (12) months of continued employment or service, and the remaining shares vesting in equal monthly installments over the following thirty six (36) months, provided, however, that for the avoidance of doubt the vesting provisions described herein shall not apply with respect to the restricted stock awards granted by the Company prior to the date hereof, (ii) for a market stand-off provision substantially similar to that in Section 2.11; and (iii) that the Company may require such purchaser or recipient to become a party to the Voting Agreement and the Right of First Refusal and Co-Sale Agreement as a condition of purchasing or receiving its shares or exercising its options, provided, however, that any holder of greater than one percent (1%) of the Company’s Common Stock (assuming conversion of any Preferred Stock) will be required to become a party to such agreements. In addition, unless otherwise approved by the Board of Directors, including at least two (2) Preferred Directors, the Company shall retain a “right of first refusal” on any transfers of Common Stock by all employees, directors and consultants until the Company’s IPO and shall have the right to repurchase unvested shares at cost upon termination of employment of a holder of restricted stock.
5.4 Prohibited Actions. The Company shall not, without the consent of (a) the Preferred Requisite Investors and the Common Requisite Investors, either directly or indirectly take any of the Prohibited Actions, (b) the Series E Requisite Investors, take any of the Series E Prohibited Actions, (c) the Series D Requisite Investors, take any of the Series D Prohibited Actions, (d) the Series C Requisite Investors, take any of the Series C Prohibited Actions, (e) the Series B Requisite Investors, take any of the Series B Prohibited Actions or (f) the Series A Requisite Investors, take any of the Series A Prohibited Actions. Any such consent may be given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect. Any defined terms used in this Section 5.4 and not defined in this Agreement shall have the meanings ascribed to such terms in the Certificate of Incorporation.

5.5 Board Matters. Unless otherwise determined by the vote of a majority of the directors then in office, the Board of Directors shall meet at least quarterly in accordance with an agreed-upon schedule. The Company shall reimburse each member of the Board of Directors who is not an employee of the Company for all reasonable out-of-pocket travel expenses incurred (consistent with the Company’s travel policy) in connection with (i) attending meetings of the Board of Directors and (ii) non-Board of Directors issues related to the Company, to the extent such expenses are incurred at the request of the Company. The Company shall at all times: (i) cause the Bylaws of the Company to provide that, unless otherwise required by the laws of the State of Delaware, any Preferred Director and the 7wire Director shall have the right to call a meeting of the Board of Directors or stockholders; and (ii) maintain provisions in the Bylaws or Certificate of Incorporation permitting the Preferred Directors and the 7wire Director to serve on all committees of the Company’s Board of Directors. Unless otherwise approved by the Board of Directors, including at least two (2) Preferred Directors, no employee of the Company shall serve on either the audit committee or the compensation committee.

5.6 Successor Indemnification. If the Company or any of its successors or assignees consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger, then to the extent necessary, proper provision shall be made so that the successors and assignees of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Directors as in effect immediately before such transaction, whether such obligations are contained in the Company’s Bylaws, its Certificate of Incorporation, or elsewhere, as the case may be.

5.7 Expenses of Counsel. In the event of a transaction which is a Sale of the Company (as defined in the Voting Agreement of even date herewith by among the Company and certain stockholders), the reasonable fees and disbursements of one counsel for the Major Investors (“Investor Counsel”), in their capacities as stockholders, shall be borne and paid by the Company, in no event to exceed $20,000. At the outset of considering a transaction which, if consummated, would constitute a Sale of the Company, the Company shall use commercially reasonable effort to obtain the ability to share with the Investor Counsel (and such counsel’s clients) and, if so permitted, shall share the confidential information (including without limitation the initial and all subsequent drafts of memoranda of understanding, letters of intent and other transaction documents and related noncompete, employment, consulting and other compensation agreements and plans) pertaining to and memorializing any of the transactions which, individually or when aggregated with others would constitute the Sale of the Company.
5.8 **Indemnification Matters.** The Company hereby acknowledges that one (1) or more of the directors nominated to serve on the Board of Directors by the Investors (each a “**Fund Director**”) may have certain rights to indemnification, advancement of expenses and/or insurance provided by one or more of the Investors and certain of their Affiliates (collectively, the “**Fund Indemnitors**”). The Company hereby agrees (a) that it is the indemnitor of first resort (**i.e.** its obligations to any such Fund Director are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Fund Director are secondary), (b) that it shall be required to advance the full amount of expenses incurred by such Fund Director and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement by or on behalf of any such Fund Director to the extent legally permitted and as required by the Company’s Certificate of Incorporation or Bylaws of the Company (or any agreement between the Company and such Fund Director), without regard to any rights such Fund Director may have against the Fund Indemnitors, and, (c) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Fund Indemnitors on behalf of any such Fund Director with respect to any claim for which such Fund Director has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Fund Director against the Company.

5.9 **Lead Series C Investor Protective Provisions.** In addition to any other vote or approval required under the Certificate of Incorporation, the Company will not (either directly or indirectly, by amendment, merger, consolidation or otherwise) do (or permit its subsidiaries to do) any of the following (collectively, the “**Lead Series C Investor Protective Provision Events**”) without obtaining the prior written consent of the Lead Series C Investor:

(a) enter into any line of business that would reasonably be expected to cause an adverse regulatory event for MGHIF and/or its Affiliates with aggregate potential liabilities or damages to MGHIF and/or its Affiliates that are material in relation to the value of the then-ownership of the Company by MGHIF and its Affiliates but that are in no event less than $15,000,000; or

(b) directly or indirectly sell, offer to sell, or otherwise provide to any third party any prescription drugs (or provide any prescriptions for the same) or otherwise employ or engage as a consultant any individual whose responsibilities on behalf of the Company include writing any prescriptions or providing any such prescription drugs, in each case for a purpose or in a manner that would reasonably be expected to cause an adverse regulatory event for MGHIF and/or its Affiliates with aggregate potential liabilities or damages to MGHIF and/or its Affiliates that are material in relation to the value of the then-ownership of the Company by MGHIF and its Affiliates but that are in no event less than $15,000,000;
provided, in each case, that within 90 days of the Lead Series C Investor’s knowledge of the occurrence of the applicable Lead Series C Investor Protective Provision Event, the Lead Series C Investor shall provide written notice to the Company that the applicable adverse regulatory event(s) would reasonably be expected to occur (the “Lead Series C Investor Notice”), which Lead Series C Investor Notice shall specify the details of such expected regulatory event(s) and the aggregate potential damages thereof to MGHIF and/or its Affiliates. Upon receipt of such Lead Series C Investor Notice, the Company will have 30 days during which it may remedy such Lead Series C Investor Protective Provision Event, including, without limitation, by (x) exiting any line of business set forth in Section 5.9(a) above, (y) ceasing to directly or indirectly sell, offer to sell, or otherwise provide to any third party any prescription drugs (or provide any prescriptions for the same) or otherwise employ or engage as a consultant any individual whose responsibilities on behalf of the Company include writing any prescriptions or providing any such prescription drugs, in each case for a purpose or in a manner as set forth in Section 5.9(b) above, or (z) taking any other action that would reasonably be expected to cause the aggregate potential damages of such Lead Series C Investor Protective Provision Event to MGHIF and/or its Affiliates to be less than $15,000,000 or to not be material in relation to the value of the then-ownership of the Company by MGHIF and its Affiliates. In the event that (i) the Lead Series C Investor fails to timely deliver the Lead Series C Investor Notice or (ii) the Company timely remedies such Lead Series C Investor Protective Provision Event, such Lead Series C Investor Protective Provision Event shall be deemed to have not occurred.

5.10 Right to Conduct Activities. The Company hereby agrees and acknowledges that each of 7wire (as defined in the Voting Agreement), DFJ (as defined in the Voting Agreement), General Catalyst (as defined in the Voting Agreement), Kinnevik (as defined in the Voting Agreement), KPCB (as defined in the Voting Agreement), Sapphire (as defined in the Voting Agreement), Microsoft (as defined in the Voting Agreement), EDBI (as defined in the Voting Agreement), Echo (as defined in the Voting Agreement) and MGHIF, in each case, together with their respective Affiliates (collectively, the “Active Investors”), is a professional investment fund or an institutional investor and as such invests in numerous portfolio companies, some of which may be deemed competitive with the Company’s business (as currently conducted or as currently propose to be conducted). The Company hereby agrees that, to the extent permitted under applicable law, no Active Investor shall be liable to the Company for any claim arising out of, or based upon, (i) the investment by such Active Investor in any entity competitive with the Company, or (ii) actions taken by any partner, officer or other representative of such Active Investor to assist any such competitive company, whether or not such action was taken as a member of the board of directors of such competitive company or otherwise, and whether or not such action has a detrimental effect on the Company; provided, however, that the foregoing shall not relieve (x) any of the Investors from liability associated with the unauthorized disclosure of the Company’s confidential information obtained pursuant to this Agreement, or (y) any director or officer of the Company from any liability associated with his or her fiduciary duties to the Company.

5.11 FCPA. The Company hereby agrees that it shall not (and shall not permit any of its subsidiaries or affiliates or any of its or their respective directors, officers, managers, employees, independent contractors, representatives or agents to) promise, authorize or make any payment to, or otherwise contribute any item of value to, directly or indirectly, to any third party, including any Non-U.S. Official (as such term is defined in the U.S. Foreign Corrupt Practices Act
of 1977, as amended (the “FCPA”), in each case, in violation of the FCPA, the U.K. Bribery Act, or any other applicable anti-bribery or anti-corruption law. The Company further agrees that it shall (and shall cause each of its subsidiaries and affiliates to) cease all of its or their respective activities, as well as remediate any actions taken by the Company, its subsidiaries or affiliates, or any of their respective directors, officers, managers, employees, independent contractors, representatives or agents in violation of the FCPA, the U.K. Bribery Act, or any other applicable anti-bribery or anti-corruption law. The Company further agrees that it shall (and shall cause each of its subsidiaries and affiliates to) maintain systems of internal controls (including, but not limited to, accounting systems, purchasing systems and billing systems) to ensure compliance with the FCPA, the U.K. Bribery Act, or any other applicable anti-bribery or anti-corruption law. Upon request, the Company agrees to provide responsive information and/or certifications concerning its compliance with applicable anti-corruption laws. The Company shall promptly notify each Investor if the Company becomes aware of any allegation, voluntary disclosure, investigation, prosecution or other enforcement action related to the FCPA or any other anti-corruption law. The Company shall, and shall cause any direct or indirect subsidiary or entity controlled by it, whether now in existence or formed in the future, to comply with the FCPA. The Company shall use its reasonable best efforts to cause any direct or indirect subsidiary, whether now in existence or formed in the future, to comply in all material respects with all applicable laws.

5.12 Termination of Covenants. The covenants set forth in this Section 5, except for Section 5.5, shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon a Deemed Liquidation Event, as such term is defined in the Certificate of Incorporation, whichever event occurs first. In addition, the covenants set forth in Section 5.9 shall terminate and be of no further force or effect at such time as the Lead Series C Investor holds fewer than 25% of the Registrable Securities acquired by it pursuant to the Series C Preferred Stock Purchase Agreement of the Company, if such time occurs earlier than the events set forth in the first sentence of this Section 5.12.

6. Miscellaneous.

6.1 Successors and Assigns. The rights under this Agreement may be assigned (but only with all related obligations) by a Holder to a transferee of Registrable Securities that (i) is an Affiliate of a Holder; (ii) is a Holder’s Immediate Family Member or trust for the benefit of an individual Holder or one or more of such Holder’s Immediate Family Members; or (iii) after such transfer, holds at least (A) 4,000,000 shares of Registrable Securities (subject to appropriate adjustment for stock splits, stock dividends, combinations, and other recapitalizations) or (B) at least 2,200,000 shares of Series D Preferred Stock (subject to appropriate adjustment for stock splits, stock dividends, combinations, and other recapitalizations); provided, however, that (x) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee and the Registrable Securities with respect to which such rights are being transferred; and (y) such transferee agrees in a written instrument delivered to the Company to be bound by and subject to the terms and conditions of this Agreement, including the provisions of Section 2.11. For the purposes of determining the number of shares of Registrable Securities held by a transferee, the holdings of a transferee (1) that is an Affiliate or stockholder of a Holder; (2) who is a Holder’s Immediate Family Member; or (3) that is a trust for the benefit of an individual Holder or such Holder’s Immediate Family Member shall be aggregated together and
6.2 **Governing Law.** This Agreement and any controversy arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Delaware.

6.3 **Counterparts; Facsimile.** This Agreement may also be executed and delivered by facsimile, electronic mail (including pdf) signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.4 **Titles and Subtitles.** The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

6.5 **Notices.** All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or: (i) personal delivery to the party to be notified; (ii) when sent, if sent by electronic mail or facsimile during the recipient’s normal business hours, and if not sent during normal business hours, then on the recipient’s next business day; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) business day after the business day of deposit with a nationally recognized overnight courier, freight prepaid, specifying next-day delivery, with written verification of receipt. All communications to the Company shall be sent to: 444 N. Michigan Ave., Suite 3400, Chicago, IL 60611, Attention: General Counsel, with a copy (which shall not constitute notice) sent to: Sidley Austin LLP, One South Dearborn, Chicago, IL 60603, Attention: Gary Gerstman. All communications shall be sent to the other respective parties at their addresses as set forth on Schedule A hereto, or to such email address, facsimile number, or address as subsequently modified by written notice given in accordance with this Section 6.5.

6.6 **Amendments and Waivers.** Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of the Company and the Requisite Investors; provided that the Company may in its sole discretion waive compliance with Section 2.12(c); and provided further that any provision hereof may be waived by any waiving party on such party’s own behalf, without the consent of any other party.

Notwithstanding the foregoing, (a) this Agreement may not be amended or terminated and the observance of any term hereof may not be waived with respect to any Investor without the written consent of such Investor, unless such amendment, termination, or waiver applies to all Investors in the same fashion, (b) the rights hereunder of the holders of any series of Preferred Stock with
with respect to such series shall not be amended or waived in a manner that adversely affects such rights differently than it affects the rights hereunder of the holders of the other series of Preferred Stock with respect to such other series without the written consent of the Investors then holding a majority of the shares of such adversely affected series then held by the Investors, and (c) any term of Section 3.2 (with respect to the provisions relating to the Lead Series C Investor) or Section 5.9 hereof may be amended and the observance of any such term of Section 3.2 or Section 5.9 hereof may be waived (either generally or in a particular instance, and either retroactively or prospectively) with, but only with, the written consent of the Company and the Lead Series C Investor. The Company shall give prompt notice of any amendment or termination hereof or waiver hereunder to any party hereto that did not consent in writing to such amendment, termination, or waiver. Any amendment, termination, or waiver effected in accordance with this Section 6.6 shall be binding on all parties hereto, regardless of whether any such party has consented thereto. No waivers or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision.

6.7 Severability. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.

6.8 Aggregation of Stock. All shares of Registrable Securities held or acquired by Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

6.9 Additional Investors. Notwithstanding anything to the contrary contained herein, if the Company issues additional shares of the Company’s Preferred Stock after the date hereof, any purchaser of such shares of Preferred Stock may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement, and thereafter shall be deemed an “Investor” for all purposes hereunder. No action or consent by the Investors shall be required for such joinder to this Agreement by such additional Investor, so long as such additional Investor has agreed in writing to be bound by all of the obligations as an “Investor” hereunder.

6.10 Entire Agreement. This Agreement (including any Schedules and Exhibits hereto), the Certificate of Incorporation and the other Transaction Agreements (as defined in the Purchase Agreement) constitute the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled.

6.11 Dispute Resolution. The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the federal and state courts located within the geographic boundaries of the State of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement (“Covered Matters”), (b) agree not to commence any suit, action or other proceeding arising out of or based upon any Covered Matters except in the state or federal courts
located in the State of Delaware, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that a party is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter of any Covered Matter may not be enforced in or by such court. Each of the parties to this Agreement consents to personal jurisdiction for any equitable action sought in the U.S. District Court for the District of Delaware or any court of the State of Delaware having subject matter jurisdiction.

WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE SECURITIES OF THE COMPANY HELD BY SUCH PARTY OR THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.12 Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such non-breaching or non-defaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

6.13 Acknowledgment. The Company acknowledges that the Investors are in the business of venture capital and private equity investing and therefore review the business plans and related proprietary information of many enterprises, including enterprises which may have products or services that are adverse to or compete directly or indirectly with those of the Company. Nothing in this Agreement shall preclude or in any way restrict any Investor or any Affiliate thereof from investing or participating in any particular enterprise whether or not such enterprise has products or services that are adverse to or compete, directly or indirectly, with those of the Company.
6.14 **Further Assurances.** At any time or from time to time after the date hereof, the parties agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instruments or documents and to take all such further action as the other party may reasonably request in order to evidence or effectuate the consummation of the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder.

6.15 **Costs of Enforcement.** If any party to this Agreement seeks to enforce its rights under this Agreement by legal proceedings, the non-prevailing party shall pay all costs and expenses incurred by the prevailing party, including, without limitation, all reasonable attorneys’ fees.

6.16 **Effect on Prior Agreement.** Upon the execution and delivery of this Agreement by the Company and the Requisite Investors who are party to the Prior Agreement (measured before giving effect to any purchase of shares of Series E Preferred Stock by such Requisite Investors), the Prior Agreement automatically shall terminate and be of no further force and effect and shall be amended and restated in its entirety as set forth in this Agreement.

[Remainder of Page Intentionally Left Blank]
The parties have executed this Fourth Amended and Restated Investors’ Rights Agreement as of the date first written above.

THE COMPANY:

LIVONGO HEALTH, INC.

By: /s/ Glen Tullman
Name: Glen Tullman
Its: CEO

[Signature Page to Investors Rights Agreement]
The parties have executed this Fourth Amended and Restated Investors’ Rights Agreement as of the date first written above.

**GENERAL CATALYST GROUP VI, L.P.**

By: General Catalyst Partners VI, L.P.
  its General Partner

By: General Catalyst GP VI, LLC
  its General Partner

By: /s/ Christopher McCain
Name: Christopher McCain
Title: Chief Legal Officer

[Signature Page to Investors Rights Agreement]
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GENERAL CATALYST GROUP VIII, L.P.

By: General Catalyst Partners VIII, L.P.
    its General Partner

By: General Catalyst GP VIII, LLC
    its General Partner

By: /s/ Christopher McCain
Name: Christopher McCain
Title: Chief Legal Officer

GENERAL CATALYST GROUP VIII SUPPLEMENTAL, L.P.

By: General Catalyst Partners VIII, L.P.
    its General Partner

By: General Catalyst GP VIII, LLC
    its General Partner

By: /s/ Christopher McCain
Name: Christopher McCain
Title: Chief Legal Officer

[Signature Page to Investors Rights Agreement]
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KINNEVIK ONLINE AB

By: /s/ Torun Litzen
Name: Torun Litzen
Title: Director Corporate Communication

By: /s/ Joakim Andersson
Name: Joakim Andersson
Title: Chief Financial Officer

[Signature Page to Investors Rights Agreement]
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**KPCB HOLDINGS, INC., AS NOMINEE**

By: /s/ Scott Ryles  
(Signature)  
Name: Scott Ryles  
Title: President and Chairman  
Address:  

Email:  

[Signature Page to Investors Rights Agreement]
The parties have executed this Fourth Amended and Restated Investors’ Rights Agreement as of the date first written above.

MERK GLOBAL HEALTH INNOVATION FUND, LLC

By:  /s/ William J. Taranto
     ________________________________
     (Signature)

Name:  William J. Taranto
Its:    WJT

[Signature Page to Investors Rights Agreement]
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7WIRE VENTURES LLC – SERIES LIVONGO E

/s/ Lee Shapiro
By: Lee Shapiro
Its: Manager

7WIRE VENTURES FUND, L.P.

By: 7wire Management, LLC
Its: Manager

By: /s/ Lee Shapiro
Name: Lee Shapiro
Its: Manager

[Signature Page to Investors Rights Agreement]
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7WIRE VENTURES WANXIANG STRATEGIC FUND I, LLC

By: 7wire Management, LLC Manager

By: /s/ Lee Shapiro
Name: Lee Shapiro
Lts: Manager

[Signature Page to Investors Rights Agreement]
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WANXIANG AMERICA CORPORATION

By: /s/ Paul Cumberland
Name: Paul Cumberland
Title: Director of Investments

[Signature Page to Investors Rights Agreement]
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**SAPPHIRE VENTURES FUND II, L.P.,**
a Delaware limited partnership

By: Sapphire Ventures (GPE) II, LLC

By: /s/ David Hartwig
Name: David Hartwig
Title: Managing Member

By: /s/ Nino Marakovic
Name: Nino Marakovic
Title: Managing Member

[Signature Page to Investors Rights Agreement]
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**DFJ VENTURE XI, L.P.**

By: DFJ Venture XI Partners, LLC  
Its: General Partner  
By: /s/ Josh Stein  
(Signature)  
Name: Josh Stein  
Title: Managing Member

**DFJ VENTURE XI PARTNERS FUND, LLC**

By: /s/ Josh Stein  
(Signature)  
Name: Josh Stein  
Title: Managing Member

[Signature Page to Investors Rights Agreement]
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ZAFFRE INVESTMENTS, LLC

By: /s/ Adreana Santangelo
Name: Adreana Santangelo
Title:

[Signature Page to Investors Rights Agreement]
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MICROSOFT GLOBAL FINANCE

By: /s/ Keith Dolliver
Name: Keith Dolliver
Title: Director

[Signature Page to Investors Rights Agreement]
The parties have executed this Fourth Amended and Restated Investors’ Rights Agreement as of the date first written above.

ECHO HEALTH VENTURES, LLC

By: /s/ Robert M. Coppedge
Name: Robert M. Coppedge
Title: Chief Executive Officer

[Signature Page to Investors Rights Agreement]
GENERAL CATALYST GROUP VI, L.P.
GENERAL CATALYST GROUP VIII, L.P.
GENERAL CATALYST GROUP VIII SUPPLEMENTAL, L.P.
7WIRE VENTURES LLC – SERIES EOSHEALTH
7WIRE VENTURES LLC – SERIES LIVONGO E
7WIRE VENTURES FUND, L.P.
7WIRE VENTURES WANXIANG STRATEGIC FUND I, LLC
7 WIRE VENTURES LLC – SERIES LIVONGO C
7WIRE VENTURES LLC – SERIES LIVONGO D
SLOW VENTURES III, LLC
GLIKVEST, LLC
KPCB HOLDINGS, INC., AS NOMINEE
DFJ VENTURE XI, L.P.
DFJ VENTURE XI PARTNERS FUND, LLC
MERCK GLOBAL HEALTH INNOVATION FUND, LLC
SAPPHIRE VENTURES FUND II, L.P.
WANXIANG AMERICA CORPORATION
COWEN INVESTMENTS LLC COWEN
PRIVATE INVESTMENTS LP
HUMANA INNOVATION ENTERPRISE, INC.
TCM I, L.P
ZAFFRE INVESTMENTS, LLC
KINNEVIK ONLINE AB
BIOMEDICAL SCIENCES INVESTMENT FUND PTE LTD
MICROSOFT GLOBAL FINANCE
AMERICAN INVESTMENT HOLDINGS, LLC
ECHO HEALTH VENTURES, LLC
ADNAN ASAR
JAMES PURSLEY
MARIO CHRISTOPHER
THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY (SEVF II)
CARLOS DOMINGUEZ
RICAHRD POULTAN
STEPHEN BOOCHEVER
PRAVEEN TOTEJA AND VANDANA TOTEJA AS JOINT TENANTS
ISAAC APPLBAUM
RICHARD EIDINGER
JEFFREY LEERINK
VEP, L.P.
RICK POULTON
SCOTT LEISHER
ISAAC APPLBAUM
WILLIAM SAHLMAN
THE ROBERT A. COMPTON LIVING TRUST DATED 12/15/15
THIS WARRANT AND THE SHARES THAT MAY BE PURCHASED HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR UNDER THE SECURITIES LAWS OF ANY STATE. THIS WARRANT HAS BEEN ACQUIRED FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO DISTRIBUTION, AND THIS WARRANT AND THE SHARES THAT MAY BE PURCHASED HEREUNDER MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AND REGISTRATION OR QUALIFICATION UNDER APPLICABLE STATE SECURITIES LAWS OR AN OPINION OF COUNSEL THAT THE PROPOSED TRANSACTION DOES NOT VIOLATE THE SECURITIES ACT OF 1933, AND APPLICABLE STATE SECURITIES LAWS.

LIVONGO HEALTH, INC.

WARRANT

Date of Issuance: March 1, 2015

THIS IS TO CERTIFY that CERNER CAPITAL, INC., a Delaware corporation (the “Holder”), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, is entitled to purchase from LIVONGO HEALTH, INC., a Delaware corporation (the “Company”), at the price of $1.14 per share (the “Exercise Price”), up to 3,473,618 shares of Common Stock, with a par value of $0.001 per share, of the Company (“Common Stock”) on the terms and subject to the conditions set forth herein. The number of shares of Common Stock purchasable hereunder and the Exercise Price set forth above shall be adjusted under certain conditions specified in Section 5 of this Warrant. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in Section 8 hereof.

This Warrant is being issued pursuant to that certain Value Added Reseller Agreement effective as of the date hereof (the “Agreement”) between the Company and Cerner Corporation (an Affiliate of the Holder).

SECTION 1.

EXERCISE

(a) Right to Exercise. This Warrant shall be exercisable during the ten-year period commencing on the date hereof and ending on February 28, 2025 (the “Option Period”) as to that number of Warrant Shares, and at such times, as are determined in accordance with Exhibit A attached hereto and made a part hereof. The Holder, in accordance with the terms hereof, may exercise this Warrant by delivering (i) the Notice of Exercise, in the form attached hereto as Exhibit B and made a part hereof (the “Notice of Exercise”), duly executed, and (ii) the Exercise Price per share for each share of Common Stock purchased, as specified in the Notice of Exercise. The aggregate Exercise Price (the “Aggregate Exercise Price”) to be paid for the shares of Common Stock to be purchased (the “Exercise Amount”) shall be equal to the product of (i) the Exercise Amount multiplied by (ii) the Exercise Price.

(b) Payment of the Aggregate Exercise Price. Payment of the Aggregate Exercise Price shall be made to the Company in cash or other immediately available funds.

(c) Stockholders Agreements. In addition to the Notice of Exercise, upon the first exercise of this Warrant, the Holder shall execute and deliver counterpart signature pages to the Stockholders Agreements. Upon the receipt of the duly executed counterpart signature pages to the Stockholders Agreement, the Company shall take all action reasonably necessary to add the Holder as a party to the Stockholders Agreements.
(d) Issuance of Shares of Common Stock. Upon receipt by the Company of the Notice of Exercise, payment of the Aggregate Exercise Price and the executed counterpart signatures to the Stockholders Agreements, the Holder shall be deemed to be the holder of record of the shares of Common Stock issuable upon such exercise, notwithstanding that certificates representing such shares of Common Stock may not then be actually delivered. Within five (5) business days after such delivery of the Notice of Exercise and payment of the Aggregate Exercise Price, the Company shall issue and cause to be delivered to the Holder a certificate or certificates (in the name of the Holder) for the Exercise Amount.

SECTION 2.
PAYMENT OF TAXES

The Holder shall pay all taxes attributable to the initial issuance of shares of Common Stock or other securities issuable upon the exercise of this Warrant or issuable pursuant to Section 5 hereof.

SECTION 3.
REPLACEMENT WARRANT

IN CASE THIS WARRANT IS MUTILATED, LOST, STOLEN OR DESTROYED, THE COMPANY SHALL ISSUE AND DELIVER IN EXCHANGE AND SUBSTITUTION FOR AND UPON CANCELLATION OF THE MUTILATED WARRANT, OR IN LIEU OF AND IN SUBSTITUTION FOR THE WARRANT LOST, STOLEN OR DESTROYED, A NEW WARRANT OF LIKE TENOR AND REPRESENTING AN EQUIVALENT RIGHT OR INTEREST, BUT ONLY UPON RECEIPT OF REASONABLE EVIDENCE OF SUCH LOSS, THEFT OR DESTRUCTION OF SUCH WARRANT.

SECTION 4.
COVENANTS

(a) Validly Issued Shares. The Company covenants that all shares of Common Stock that may be issued pursuant to this Warrant, assuming full payment of the Aggregate Exercise Price, shall, upon delivery by the Company, be duly authorized and validly issued, fully paid and nonassessable, free from all liens and charges with respect to the issue or delivery thereof and otherwise free of all other security interests and encumbrances (other than restrictions under the Stockholders Agreements and applicable federal and/or state securities laws).

(b) Reservation of Shares. The Company shall at all times reserve and keep available out of the aggregate of its authorized but unissued shares of Common Stock such number of its duly authorized shares of Common Stock as shall be sufficient to enable the Company to issue Common Stock to the Holder or its permitted designee upon exercise of this Warrant.
SECTION 5.

ADJUSTMENT TO EXERCISE PRICE; OTHER ADJUSTMENTS

Under certain conditions, the Exercise Price is subject to adjustment as set forth in this Section 5.

(a) Adjustments to Number of Shares. Upon any adjustment of the Exercise Price as provided in Section 5(b), the Holder shall thereafter be entitled to purchase, at the Exercise Price resulting from such adjustment, the number of shares of Common Stock obtained by multiplying the Exercise Price in effect immediately prior to such adjustment by the number of shares of Common Stock purchasable hereunder immediately prior to such adjustment and dividing the product thereof by the Exercise Price resulting from such adjustment.

(b) Adjustments to Exercise Price. The Exercise Price shall be subject to adjustment from time to time as follows and, thereafter, as adjusted, shall be deemed to be the Exercise Price hereunder. In case at any time or from time to time the Company shall:

(i) issue to the holders of any of its Common Stock a dividend payable in, or other distribution of, shares of Common Stock (a “Stock Dividend”);

(ii) subdivide any of its classes of its outstanding shares of Common Stock into a larger number of shares of Common Stock, including without limitation by means of a stock split (a “Stock Subdivision”); or

(iii) combine any of its classes of its outstanding shares of Common Stock into a smaller number of shares of Common Stock (a “Stock Combination”),

then the Exercise Price in effect immediately prior thereto shall be (1) proportionately increased in the case of a Stock Combination, and (2) proportionately decreased in the case of a Stock Dividend and Stock Subdivision. In the event the Company shall declare, pay or make any dividend on the shares of any of its Common Stock payable in any right to acquire shares of Common Stock for no consideration, then the Company shall be deemed to have made a Stock Dividend in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire shares of Common Stock.

(c) Changes in Common Stock. In case at any time the Company shall initiate any transaction or be a party to any transaction (including, without limitation, a merger, consolidation, share exchange, sale, lease or other disposition of all or substantially all of the Company’s assets, liquidation, recapitalization or reclassification of the Common Stock) in connection with which the previous Outstanding Common Stock shall be changed into or exchanged for different securities of the Company or Capital Stock or other securities of another corporation or interests in a non-corporate entity or other property (including cash) or any combination of the foregoing (each such transaction being herein called a “Transaction”), then the Company shall use reasonable best efforts to include, as a condition of the consummation of the Transaction, that lawful, enforceable and adequate provision be made to entitle the Holder to a new warrant in form and substance similar to, and in exchange for, this Warrant to purchase all or a portion of such securities or other property (including cash) or any combination of the foregoing (each such transaction being herein called a “Transaction”), then the Company shall use reasonable best efforts to include, as a condition of the consummation of the Transaction, that lawful, enforceable and adequate provision be made to entitle the Holder to a new warrant in form and substance similar to, and in exchange for, this Warrant to purchase all or a portion of such securities or other property; provided that, if the Company is unable to secure such new warrant and the then-current fair market value of one share of Common Stock is greater than the Exercise Price, then the Holder will exercise this Warrant in connection with the consummation of the Transaction for, in lieu of the Warrant Shares issuable upon such exercise, the securities or other property (including cash) to which such Holder would have been entitled upon consummation of the Transaction if such Holder had exercised this Warrant immediately prior thereto (subject to adjustments from and after the consummation date as nearly equivalent as possible to the adjustments provided for in this Section 5). The foregoing provisions of this Section 5(c) shall similarly apply to successive Transactions.
(d) Other Action Affecting Common Stock. In case at any time or from time to time the Company shall take any action of the type contemplated in Section 5(b) hereof but not expressly provided for by such provisions, the Exercise Price shall be adjusted in such manner as to satisfy the provisions of this Section 5.

(e) Notices. Whenever the Exercise Price is to be adjusted pursuant to this Section 5, unless otherwise agreed by the Holder, the Company shall promptly (and in any event within 20 days after the event requiring the adjustment) notify the Holder of the event requiring the adjustment and the method by which such adjustment is to be calculated.

SECTION 6.

REPRESENTATIONS AND WARRANTIES

Company represents and warrants to Holder as follows:

(a) No Impairment. The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, share exchange, dissolution or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant and will at all times in good faith assist in the carrying out of all such terms. Company shall provide prompt notice to Holder of any amendments to or other changes affecting its Certificate of Incorporation, Bylaws, Stockholders Agreement or other documents (including any newly adopted documents) which could affect the rights and obligations of either Party under this Warrant.

(b) Organization and Authority. Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all necessary power and authority to enter into this Warrant and any ancillary agreements, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary. The execution and delivery of this Warrant and the ancillary agreements by Company, the performance by Company of its respective obligations hereunder and thereunder and the consummation by Company of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of Company. Upon execution this Warrant will constitute legal, valid and binding obligations of Company, enforceable against Company, in accordance with its respective terms except to the extent that the enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, and (ii) general principles of equity regardless of whether enforceability is considered in a proceeding in equity or at law.

(c) No Conflict. The execution, delivery and performance of this Warrant and any ancillary agreements by Company do not and will not (a) violate, conflict with or result in the breach of any provision of its Certificate of Incorporation, Bylaws or the Stockholders Agreement, (b) conflict with or violate (or cause an event which could materially and adversely affect the transactions contemplated by this Warrant as a result of) any law, governmental regulation or governmental order applicable to them or any of their respective assets, properties or businesses, or (c) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any lien on any of the assets or properties of any of them pursuant to, any note, bond, mortgage or indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which Company is a party or by which any of its respective assets or properties is bound or affected.

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(d) **No Litigation or Adverse Events.** There are no outstanding orders, judgments, injunctions, awards or decrees of any court, arbitrator or governmental or regulatory body involving Company. No suit, action or legal, administrative, arbitration or other proceeding or reasonable basis therefor, or no investigation by any governmental agency, pertaining to Company or its assets is pending or has been threatened against Company which could adversely affect the financial condition or prospects of Company or the conduct of the business thereof or any of its assets or materially adversely affect the ability of Company to consummate the transactions contemplated by this Warrant. There is no dispute of any kind with any person under any contract or agreement which materially adversely affects, or may materially adversely affect, Corporation, its business or operation of its assets.

(e) **Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Warrant or any ancillary agreements based upon arrangements made by or on behalf of Company.

**SECTION 7.**

**TRANSFERS OF THE WARRANT AGREEMENT OR WARRANT SHARES**

(a) **Restrictions on Transfers.** The Holder may not (i) Transfer this Warrant other than to a Controlled Affiliate of Holder, or (ii) Transfer any Warrant Shares, without the prior written consent the Board of Directors of the Company or as otherwise permitted under the Stockholders Agreements.

(b) **Non-Circumvention.** The Holder agrees that it will not take any action with respect to the sale or issuance of equity interests in the Holder or any Affiliate of Holder where the purpose or effect of such action is to avoid the Transfer restrictions of this Section 7.

(c) **Acknowledgment of the Holder.** This Warrant has not been, and the Warrant Shares at the time of their issuance may not be, registered under the Securities Act and except as provided in this Warrant, the Company shall not be required to so register this Warrant and the Warrant Shares. This Warrant and the Warrant Shares are issued or issuable subject to the provisions and conditions contained herein, and every Holder hereof by accepting the same (i) agrees with the Company to such provisions and conditions, and (ii) represents to the Company that this Warrant has been acquired and the Warrant Shares will be acquired for the account of the Holder for investment and not with a view to or for sale in connection with any distribution thereof.

(d) **Compliance with Securities Laws.** The Holder agrees that this Warrant and the Warrant Shares may not be sold or otherwise disposed of except pursuant to an effective registration statement under the Securities Act and applicable state securities laws or pursuant to an applicable exemption from the registration requirements of the Securities Act and applicable state securities laws. In the event that the Holder transfers this Warrant or the Warrant Shares pursuant to an applicable exemption from registration, the Company may request, at its expense, that the Holder deliver an opinion of counsel reasonably acceptable to the Company that the proposed transfer does not violate the Securities Act and applicable state securities laws. Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the Company’s initial public offering (the “IPO”) and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days), or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (1) the publication or other distribution of research reports; and (2) analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto, (a) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase,
purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any
shares of Capital Stock held immediately prior to the effectiveness of the registration statement for the IPO; or (b) enter into any swap or other
arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Capital Stock, whether any such
transaction described in clause (a) or (b) above is to be settled by delivery of Capital Stock or other securities, in cash or otherwise. The underwriters in
connection with the IPO are intended third-party beneficiaries of this subsection and shall have the right, power and authority to enforce the provisions
hereof as though they were a party hereto. Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in the
IPO that are consistent with this subsection or that are necessary to give further effect thereto.

(c) **Restrictive Securities Legend**. The certificate representing the Warrant Shares shall bear the restrictive legends as follows:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED
THE "ACT"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR
OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE
SECURITIES LAWS IN ACCORDANCE WITH APPLICABLE REGISTRATION REQUIREMENTS OR AN EXEMPTION THEREFROM. THE ISSUER
OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER,
SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES
LAWS. THIS CERTIFICATE MUST BE SURRENDERED TO THE COMPANY OR ITS TRANSFER AGENT AS A CONDITION PRECEDENT TO THE
SALE, TRANSFER, PLEDGE OR HYPOTHECATION OF ANY INTEREST IN ANY OF THE SECURITIES REPRESENTED HEREBY.

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO,
AND IN CERTAIN CASES PROHIBITED BY, THE TERMS AND CONDITIONS OF A CERTAIN RIGHT OF FIRST REFUSAL AND CO-SALE
AGREEMENT, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, BY AND AMONG THE STOCKHOLDER, THE CORPORATION AND
CERTAIN OTHER HOLDERS OF STOCK OF THE CORPORATION. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN
REQUEST TO THE SECRETARY OF THE CORPORATION.

THE SHARES EVIDENCED HEREBY ARE SUBJECT TO A VOTING AGREEMENT, AS MAY BE AMENDED FROM TIME TO TIME, (A
COPY OF WHICH MAY BE OBTAINED UPON WRITTEN REQUEST FROM THE COMPANY), AND BY ACCEPTING ANY INTEREST IN SUCH
SHARES THE PERSON ACCEPTING SUCH INTEREST SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE
PROVISIONS OF THAT VOTING AGREEMENT, INCLUDING CERTAIN RESTRICTIONS ON TRANSFER AND OWNERSHIP SET FORTH
THEREIN.

**SECTION 8.**

**DEFINITIONS**

As used herein, the following terms shall have the following meanings.

An "Affiliate" of a specified Person shall mean a Person which, directly or indirectly, through one or more intermediaries, Controls, or is
Controlled by, or is under common Control with, the Person specified.
“Agreement” has the meaning set forth in the Preamble.

“Aggregate Exercise Price” has the meaning set forth in Section 1(a).

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

“Certificate of Incorporation” means the Certificate of Incorporation of the Company, as in effect on the date hereof, as amended from time to time.

“Company” has the meaning set forth in the Preamble.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Convertible Securities” means evidences of indebtedness, shares of stock or other securities (including, but not limited to options and warrants) which are by their terms directly or indirectly convertible, exercisable or exchangeable, with or without payment of additional consideration in cash or property, for shares of Common Stock, either immediately or upon the onset of a specified date or the happening of a specified event.

“Exercise Amount” has the meaning set forth in Section 1(a).

“Exercise Price” has the meaning set forth in the Preamble.

“Holder” has the meaning set forth in the Preamble.

“Initial Term” has the meaning set forth in the Agreement.

“New Users” has the meaning set forth in the Agreement.

“Notice of Exercise” has the meaning set forth in Section 1(a).

“Option Period” has the meaning set forth in Section 1(a).

“Outstanding Common Stock” of the Company means, as of the date of determination, the sum (without duplication) of the following: (a) the number of shares of Common Stock then outstanding at the date of determination; (b) the number of shares of Common Stock then issuable upon the exercise of this Warrant (as such number of shares may be adjusted pursuant to the terms hereof); and (c) the number of shares of Common Stock then issuable upon the exercise or conversion of Convertible Securities and any warrants, options or other rights to subscribe for or purchase Common Stock or Convertible Securities (including any unvested options and securities even though not then exercisable for or convertible into Common Stock).
“Person” means any individual, corporation, proprietorship, firm, partnership, limited partnership, limited liability company, trust, association or other entity.

“Securities Act” means the Securities Act of 1933, as amended.

“Stock Combination” has the meaning set forth in Section 5(b)(iii).

“Stock Dividend” has the meaning set forth in Section 5(b)(i).

“Stockholders Agreements” means (a) the Right of First Refusal and Co-Sale Agreement dated as of April 22, 2014, by and among the Company and certain stockholders, as may be amended, restated or otherwise modified from time to time, and (b) the Voting Agreement dated as of April 22, 2014, by and among the Company and certain stockholders, as may be amended, restated or otherwise modified from time to time.

“Stock Subdivision” has the meaning set forth in Section 5(b)(ii).

“Transaction” has the meaning set forth in Section 5(c).

“Transfer” means any direct or indirect transfer, donation, sale, assignment, pledge, encumbrance, hypothecation, gift, creation of a security interest in or lien on, or other disposition, irrespective of whether any of the foregoing are effected with or without consideration, voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise, inter vivos or upon death.

“Warrant” has the meaning set forth in the Preamble.

“Warrant Shares” means (a) the shares of Common Stock issued or issuable upon exercise of this Warrant in accordance with its terms, and (b) all other shares of the Company’s Capital Stock issued with respect to such shares by way of stock dividend, stock split or other reclassification or in connection with any merger, consolidation, recapitalization or other reorganization affecting the Company’s Capital Stock.

SECTION 9.
SURVIVAL OF PROVISIONS

ALL OF THE PROVISIONS OF THIS WARRANT SHALL EXPRESSLY SURVIVE ANY EXERCISE OF THIS WARRANT UNTIL THE DATE ON WHICH THE HOLDER NO LONGER HOLDS ANY WARRANT SHARES.

SECTION 10.
DELAYS, OMISSIONS AND INDULGENCES

It is agreed that no delay or omission to exercise any right, power or remedy accruing to the Holder upon any breach or default of the Company under this Warrant shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or default, or any acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be
deemed a waiver of any other breach or default theretofore or thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on the Holder’s part of any breach or default under this Warrant, or any waiver on the Holder’s part of any provisions or conditions of this Warrant must be in writing and that all remedies, either under this Warrant, or by law or otherwise afforded to the Holder, shall be cumulative and not alternative.

SECTION 11.
CAPTIONS

The titles and captions of the Sections and other provisions of this Warrant are for convenience of reference only and are not to be considered in constructing this Warrant.

SECTION 12.
NOTICES

All notices, demands and other communications provided for or permitted hereunder shall be made in writing and shall be by registered or certified first-class mail, return receipt requested, telecopy, overnight courier service or personal delivery:

(i) If to the Holder, addressed as follows:
Cerner Corporation
2800 Rockcreek Parkway
North Kansas City, Missouri 64117
Attention: Chief Financial Officer

with a copy to:
Cerner Corporation
Chief Legal Officer
2800 Rockcreek Parkway
North Kansas City, MO 64117

(ii) If to the Company, addressed as follows:
Livongo Health, Inc.
444 N Michigan Ave
Suite 2880
Chicago, IL 60611

with a copy to:
Vedder Price P.C.
222 N. LaSalle Street, Suite 2400
Chicago, Illinois 60601

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All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; when delivered by courier, if delivered by commercial overnight courier service; five (5) business days after being deposited in the mail, postage prepaid, if mailed; and when receipt is acknowledged, if telecopied.

SECTION 13.
SUCCESSORS AND ASSIGNS

This Warrant shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

SECTION 14.
AMENDMENTS

Neither this Warrant nor any term hereof may be amended, changed, waived or terminated without the prior written consent of the Holder and the Company to such action.

SECTION 15.
SEVERABILITY

If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits of the remaining provisions hereof.

SECTION 16.
GOVERNING LAW

This Warrant is to be construed and enforced in accordance with and governed by the laws of the State of Delaware and without regard to the principles of conflicts of law of such state.

SECTION 17.
ENTIRE AGREEMENT

This Warrant is intended by the parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein.

SECTION 18.
NO RIGHTS AS AN EQUITY HOLDER

Nothing contained herein shall entitle the Holder to any rights as an equity holder or member of the Company or to be deemed the holder of any securities that may at any time be issuable on the exercise of the rights hereunder for any purpose nor shall anything contained herein be construed to confer upon the Holder, as such, until the rights under this Warrant shall have been first exercised and the Warrant Shares purchasable upon exercise of the rights hereunder shall have become deliverable as provided herein.
SECTION 19.
RULES OF CONSTRUCTION

Unless the context otherwise requires, “or” is not exclusive, and references to sections or subsections refer to sections or subsections of this Warrant. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require.

SECTION 20.
FEES AND EXPENSES

All fees and expenses (including, without limitation, legal, auditing and accounting fees, costs and expenses) incurred in connection with considering, pursuing, negotiating, documenting or consummating this Warrant and the transactions contemplated hereby shall be borne and paid solely by the party incurring such fees, costs and expenses.
IN WITNESS WHEREOF, the Company has caused this Warrant to be issued and executed in its corporate name by its duly authorized officer as of the date of issuance set forth above.

LIVONGO HEALTH, INC.
a Delaware corporation

By: /s/ Brian Vendenberg
Name: Brian Vandenbarg
Title: General Counsel

ACKNOWLEDGED AND ACCEPTED this 1st day of March, 2015.

CERNER CAPITAL, INC.
a Delaware corporation

By: /s/ Marc E. Elkins
Name: Marc E. Elkins
Title: Assistant Secretary
THE WARRANT SHALL BE EXERCISABLE

The Warrant Shares shall vest and become exercisable during the Option Period as follows:

1. 1,389,447 Warrant Shares shall vest and become exercisable at the end of the first year of the Initial Term if the Agreement is then in effect. This Warrant shall terminate and be of no further force or effect if the Agreement is not in effect at the end of the first year of the Initial Term.

2. Additional Warrant Shares as indicated below shall vest and become exercisable as of the end of the Initial Term if Cerner has enrolled the following number of cumulative New Users as of the end of the Initial Term:
   (a) 694,724 Warrant Shares if Cerner has enrolled at least 75,000 but less than 100,000 cumulative New Users;
   (b) 1,389,447 Warrant Shares if Cerner has enrolled at least 100,000 but less than 125,000 cumulative New Users; or
   (c) 2,084,171 Warrant Shares if Cerner has enrolled at least 125,000 cumulative New Users.
NOTICE OF EXERCISE

To: __________________________

______________________________

______________________________

1. Capitalized terms used but not otherwise defined herein have the meanings ascribed thereto in the Warrant. The undersigned, pursuant to the provisions of the Warrant, hereby elects to exercise the Warrant with respect to shares of Common Stock issuable pursuant to the Warrant. Subject to adjustment after confirmation with the Company, the Holder has calculated the number of Warrant Shares to be ______ shares of Common Stock.

2. Subject to adjustment after confirmation with the Company, the undersigned herewith tenders payment for such shares, together with any applicable transfer taxes, in the following amount $[_______] payable in full in the form of wire transfer or a certified or official bank check in same-day funds.

3. Please issue a certificate or certificates representing the shares issuable in respect hereof under the terms of the attached Warrant, as follows:

   (Name of Record Holder)

and deliver such certificate or certificates to the following address:

   (Address of Record Holder/Transferee)

4. The undersigned represents that the aforesaid shares are being acquired for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares.

   (Signature)

   (Date)
THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR ANY APPLICABLE STATE SECURITIES LAWS, AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 4 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR PURSUANT TO RULE 144 OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

WARRANT TO PURCHASE STOCK

Company: LIVONGO HEALTH, INC., a Delaware corporation
Number of Shares: See Paragraph A below
Class of Stock: Common Stock
Warrant Price: $0.40 per share
Issue Date: April 16, 2015
Expiration Date: April 16, 2025 (Subject to Section 4.1)

THIS WARRANT TO PURCHASE STOCK (THIS “WARRANT”) CERTIFIES THAT, for good and valuable consideration, the receipt of which is hereby acknowledged, COMERICA BANK, a Texas banking association, or its assignee (“Holder”), is entitled to purchase the number of fully paid and nonassessable shares of the class of securities (the “Shares”) of LIVONGO HEALTH, INC., a Delaware corporation (the “Company”) at the Warrant Price, all as set forth above and as adjusted pursuant to the terms of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

A. The number of fully paid and non-assessable shares for which this Warrant shall be exercisable shall equal the sum of (i) one percent (1.0%) of each Term Loan divided by (ii) the Warrant Price. For the sake of clarity, the Number of Shares shall be earned with each Term Loan as stated in the previous sentence, but shall not exceed the quotient that is one percent (1.0%) of the Term Loan Amount divided by the Warrant Price.

ARTICLE 1
EXERCISE

1.1 Method of Exercise. Holder may exercise this Warrant from time to time for all or any part of the unexercised Shares by delivering a duly executed Notice of Exercise in substantially the form attached as Appendix I to the principal office of the Company (or such other appropriate location as Holder is so instructed by the Company). Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company) or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased. Notwithstanding any other provision
hereof, if an exercise of any portion of this Warrant is to be made in connection with a public offering or an Acquisition (as defined below), such exercise may at the election of the Holder be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the closing of such transaction.

1.2 [Intentionally Omitted.]

1.3 Delivery of Certificate and New Warrant. Within thirty (30) days after Holder exercises this Warrant and the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised and has not expired, a new warrant representing the Shares not so acquired.

1.4 Replacement of Warrants. In the case of loss, theft or destruction of this Warrant, upon delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company at its expense shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.5 Acquisition of the Company.

1.5.1 “Acquisition.” For the purpose of this Warrant, “Acquisition” means (a) any sale, license, or other disposition of all or substantially all of the assets (including intellectual property) of the Company, or (b) any reorganization, consolidation, merger, sale of the voting securities of the Company or other transaction or series of related transactions where the holders of the Company’s securities before the transaction or series of related transactions beneficially own less than fifty percent (50%) of the outstanding voting securities of the surviving entity after the transaction or series of related transactions.

1.5.2 Treatment of Warrant in the Event of an Acquisition. The Company shall give Holder written notice at least twenty (20) days prior to the closing of any proposed Acquisition. The Company will use commercially reasonable efforts to cause (i) the acquirer of the Company, (ii) successor or surviving entity or (iii) parent entity in an Acquisition (the “Acquirer”) to assume this Warrant as a part of the Acquisition.

(a) If the Acquirer assumes this Warrant, then this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price shall be adjusted accordingly, and the Warrant Price and number and class of Shares shall continue to be subject to adjustment from time to time in accordance with the provisions hereof.
(b) If the Acquirer refuses to assume this Warrant in connection with the Acquisition, the Company shall give Holder an additional written notice at least ten (10) days prior to the closing of the Acquisition of such fact. In such event, notwithstanding any other provision of this Warrant to the contrary, Holder may immediately exercise this Warrant in the manner specified in this Warrant with such exercise effective immediately prior to closing of the Acquisition. If Holder elects not to exercise this Warrant, then this Warrant will terminate immediately prior to the closing of the Acquisition. Notwithstanding any other provision of this Warrant to the contrary if the Acquirer refuses to assume this Warrant in connection with such Acquisition, other than in connection with an Excluded Acquisition (as defined below), then effective as of the date that is ten (10) days prior to the closing of such Acquisition, the Holder shall have the option to elect to put this Warrant to the Company for a per Share amount equal to the difference between the Acquisition consideration payable for one Share and the Warrant Price. As used herein, an “Excluded Acquisition” means, an Acquisition where the consideration that the holders of the Shares are entitled to receive on account of the Shares consists entirely of cash and/or shares of common stock that are publicly traded on a national exchange and where the shares, if any, receivable by the Holder of this Warrant were the Holder to exercise this Warrant in full immediately prior to the closing of such Acquisition may be publicly re-sold by the Holder in their entirety within the three (3) months following such closing pursuant to Rule 144 or an effective registration statement under the Act.

ARTICLE 2
ADJUSTMENTS TO THE SHARES

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on its common stock payable in common stock, or other securities, or subdivides the outstanding common stock into a greater amount of common stock, then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend or subdivision occurred.

2.2 Reclassification, Exchange or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company’s Certificate of Incorporation upon the closing of a registered public offering of the Company’s common stock. The Company or its successor shall promptly issue to Holder a new warrant for such new securities or other property. The new warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price, the number of securities or property issuable upon exercise of the new warrant and expiration date. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.
2.3 Adjustments for Combinations, Etc. If the outstanding Shares are combined or consolidated, by reclassification, reverse split or otherwise, into a lesser Number of Shares, the Warrant Price shall be proportionately increased. If the outstanding Shares are split or multiplied, by reclassification or otherwise, into a greater Number of Shares, the Warrant Price shall be proportionately decreased.

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or Bylaws or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out all the provisions of this Article 2 and in taking all such action as may be necessary or appropriate to protect Holder’s rights under this Article 2 against dilution or other impairment.

2.5 Certificate as to Adjustments. Upon each adjustment of the Warrant Price or number of Shares, the Company at its expense shall promptly compute such adjustment, and furnish Holder with a certificate signed by its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price and number of Shares in effect upon the date thereof and the series of adjustments leading to such Warrant Price and number of Shares.

2.6 Limitations on Liability. Nothing contained in this Warrant shall be construed as imposing any liabilities on Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

2.7 Fractional Shares. No fractional Shares shall be issuable upon exercise of this Warrant and the Number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise of this Warrant, the Company shall eliminate such fractional share interest by paying Holder an amount in cash computed by multiplying the fractional interest by the fair market value, as determined by the Company’s Board of Directors, of a full Share.

ARTICLE 3
REPRESENTATIONS AND COVENANTS OF THE COMPANY

3.1 Representations and Warranties. The Company hereby represents and warrants to, and agrees with, the Holder as follows:

3.1.1 The initial Warrant Price referenced on the first page of this Warrant is not greater than the fair market value of the Shares as of the date of this Warrant.
3.1.2 This Warrant is and any Warrant issued in substitution for or replacement of this Warrant shall be, upon issuance, duly authorized and validly issued. All Shares which may be issued upon the exercise of the purchase right represented by this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

3.1.3 The Company’s capitalization table delivered to Holder as of the Issue Date is true and complete as of the Issue Date.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (c) to effect any reclassification or recapitalization of stock; or (d) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give Holder (1) at least ten (10) days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above; and (2) in the case of the matters referred to in (c) and (d) above at least ten (10) days prior written notice of the date when the same will take place (and specifying the date on which the holders of stock will be entitled to exchange their stock for securities or other property deliverable upon the occurrence of such event). Upon request, the Company shall provide Holder with such information reasonably necessary for Holder to evaluate its rights as a holder of this Warrant or Warrant Shares in the case of matters referred to (a), (b), (c) and (d) herein above.

3.3 Information Rights. So long as the Holder holds this Warrant and/or any of the Shares, the Company shall deliver to the Holder (a) promptly after mailing, copies of all communications, information and/or communiques to the shareholders of the Company, (b) within one hundred fifty (150) days after the end of each fiscal year of the Company, the annual audited financial statements of the Company certified by independent public accountants of recognized standing and (c) within forty five (45) days after the end of each calendar month through February 2015, and within thirty (30) days after the end of each calendar month thereafter, the Company’s monthly, unaudited financial statements. In addition, and without limiting the generality of the foregoing, so long as the Holder holds this Warrant and/or any of the Shares, the Company shall afford to the Holder the same access to information concerning the Company and its business and financial condition as would be afforded to a holder of the class of Shares under applicable state law and/or any agreement with any holder of the class of Shares.
3.4 Registration Under the Securities Act.

(a) If the Company proposes to register (including, for this purpose, a registration effected by the Company for stockholders other than the Holder) any of its Common Stock under the Securities Act of 1933 in connection with the public offering of such securities solely for cash (other than in an Excluded Registration), the Company shall, at such time, promptly give Holder notice of such registration. Upon the request of Holder given within twenty (20) days after such notice is given by the Company, the Company shall, subject to the provisions of Section 3.3(b), cause to be registered all of the Shares that Holder has requested to be included in such registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 3.3 before the effective date of such registration, whether or not Holder has elected to include Shares in such registration. “Excluded Registration” means (i) a registration relating to the sale of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, or similar plan; (ii) a registration relating to an SEC Rule 145 transaction; (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Shares; or (iv) a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

(b) In connection with any offering involving an underwriting of shares of the Company’s capital stock pursuant to Section 3.3(a), the Company shall not be required to include any of the Holder’s Shares in such underwriting unless Holder accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company.

(c) All expenses (other than Selling Expenses) incurred in connection with registrations, filings, or qualifications pursuant to Section 3.3, including all registration, filing, and qualification fees; printers’ and accounting fees; fees and disbursements of counsel for the Company shall be borne and paid by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration if the registration request is subsequently withdrawn at the request of Holder. “Selling Expenses” means all underwriting discounts, selling commissions, and stock transfer taxes applicable to the sale of Shares, and fees and disbursements of counsel for any Holder.

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ARTICLE 4
MISCELLANEOUS

4.1 Term: Exercise Upon Expiration. This Warrant is exercisable in whole or in part, at any time and from time to time on or before the Expiration Date set forth above; provided, however, that if the Company completes its initial public offering within the three-year period immediately prior to the Expiration Date, the Expiration Date shall automatically be extended until the third anniversary of the effective date of the Company’s initial public offering. The Company shall give Holder written notice of Holder’s right to exercise this Warrant not less than ninety (90) days before the Expiration Date. If the notice is not so given, the Expiration Date shall automatically be extended until ninety (90) days after the date the Company delivers such notice to Holder. The Company agrees that Holder may terminate this Warrant, upon notice to the Company, at any time in its sole discretion.

4.2 Legends. This Warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR ANY APPLICABLE STATE SECURITIES LAWS, AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 4BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR PURSUANT TO RULE 144 OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

4.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee. The Company shall not require Comerica Bank (“Bank”) or a Bank Affiliate (as defined herein) to provide an opinion of counsel or investment representation letter if the transfer is to Bank’s parent company, Comerica Incorporated (“Comerica”), or any other affiliate of Bank (“Bank Affiliate”).

4.4 Transfer Procedure. After receipt of the executed Warrant, Bank will transfer all of this Warrant to Comerica Ventures Incorporated, a non-banking subsidiary of Comerica and a Bank Affiliate (“Ventures”). Subject to the provisions of Section 4.3, Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the securities issuable, directly or indirectly, upon conversion of the Shares, if any) to an affiliate of Holder by giving the Company notice of the portion of this Warrant being transferred setting forth the name, address and taxpayer identification number of the transferee and surrendering this Warrant to the Company for reissuance to the transferee(s) (and Holder, if applicable) and such affiliate shall then be entitled to all the rights of Holder under this Warrant and any related agreements, and the Company shall cooperate fully in ensuring that any stock issued upon exercise of this Warrant is issued in the name of the affiliate that exercises this Warrant. The terms and conditions of this Warrant shall inure to the benefit of, and be binding upon, the Company and the holders hereof and their respective permitted successors and assigns. Each such notice of transfer shall describe the manner and
circumstances of the proposed transfer in sufficient detail and, other than a transfer to Ventures or other affiliate of Holder, if reasonably requested by the Company, shall be accompanied at such Holder’s expense by either (i) a written opinion of legal counsel who shall, and whose legal opinion shall, be reasonably satisfactory to the Company, addressed to the Company, to the effect that the proposed transaction may be effected without registration under the Securities Act of 1933; (ii) a “no action” letter from the Securities Exchange Commission (the “SEC”) to the effect that the proposed transfer without registration will not result in a recommendation by the staff of the SEC that action be taken with respect thereto; or (iii) any other evidence reasonably satisfactory to counsel to the Company to the effect that the proposed transfer may be effected without registration under the Securities Act of 1933, whereupon the Holder shall be entitled to transfer this Warrant or the Shares issuable upon exercise of this Warrant in accordance with the terms of the notice given by the Holder to the Company. Each certificate, instrument or book entry evidencing this Warrant or the Shares issuable upon exercise of this Warrant transferred as above provided shall bear the appropriate restrictive legend.

4.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when:
(i) given personally or mailed by first-class registered or certified mail, postage prepaid, or sent via a nationally recognized overnight courier service (such as, but not limited to, Federal Express, DHL or UPS), fee prepaid, or (ii) on the date sent by email or facsimile if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Such communications must be sent to the respective parties at the address or facsimile number as may have been furnished to the Company or the Holder, as the case may be, in writing by the Company or such Holder from time to time. Effective upon the receipt of executed Warrant and initial transfer described in Article 5.4 above, all notices to the Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Comerica Ventures Incorporated
Attn: Warrant Administrator
1717 Main Street, 5th Floor, MC
6406 Dallas, Texas 75201

All notices to the Company shall be addressed as follows:
LIVONGO HEALTH, INC.
444 N. Michigan Ave., Suite 2880
Chicago, IL 60611

4.6 Amendments; Waiver. This Warrant and any term hereof may be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by the Company or the Holder of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Warrant shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
4.7 Cumulative Remedies. The rights and remedies provided in this Warrant are cumulative and are not exclusive of, and are in addition and not in substitution for, any other rights or remedies available at law, in equity or otherwise.

4.8 No Strict Construction. This Warrant shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

4.9 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its principles regarding conflicts of law.

[Remainder of page left intentionally blank]
LIVONGO HEALTH, INC.

By:  /s/ Mario A. Christopher Na
Name:  Mario A. Christopher
Title:  CFO

[signature page to warrant to purchase stock]
APPENDIX I
NOTICE OF EXERCISE

1. The undersigned hereby elects to purchase shares of the stock of LIVONGO HEALTH, INC. pursuant to the terms of the attached Warrant, and tenders herewith payment of the purchase price of such shares in full.

2. Please issue a certificate or certificates representing said shares in the name of the undersigned or in such other name as is specified below:
   Comerica Ventures Incorporated
   Attn: Warrant Administrator
   1717 Main Street, 5th Floor, MC
   6406 Dallas, Texas 75201

3. The undersigned represents it is acquiring the shares solely for its own account and not as a nominee for any other party and not with a view toward the resale or distribution thereof except in compliance with applicable securities laws.

COMERICA VENTURES INCORPORATED or
Assignee

_______________________________
(Signature)

_______________________________
(Name and Title)

_______________________________
(Date)
WARRANT TO PURCHASE STOCK

Corporation: EOSHEALTH, INC., a Delaware corporation
Number of Shares: See Paragraph A below (subject to Section 1.6)
Class of Stock: Common Stock (subject to Section 1.6)
Warrant Price: $0.18 per share (subject to Section 1.6)
Issue Date: September 5, 2014
Expiration Date: September 5, 2024 (Subject to Section 4.1)

A. The number of fully paid and non-assessable shares for which this Warrant shall be exercisable shall equal the sum of (i) one percent (1.0%) of each Term Advance divided by (ii) the Warrant Price. For the sake of clarity, the Number of Shares shall be earned with each Term Advance as stated in the previous sentence, but shall not exceed the quotient that is one percent (1.0%) of the Term Loan Amount divided by the Warrant Price.

ARTICLE 1
EXERCISE

1.1 Method of Exercise. Holder may exercise this Warrant from time to time for all or any part of the unexercised Shares by delivering a duly executed Notice of Exercise in substantially the form attached as Appendix I to the principal office of the Company (or such other appropriate location as Holder is so instructed by the Company). Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company) or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased. Notwithstanding any other provision hereof, if an exercise of any portion of this Warrant is to be made in connection with a public offering or an Acquisition (as defined below), such exercise may at the election of the Holder be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the closing of such transaction.

1.2 [Intentionally Omitted]

1.3 Delivery of Certificate and New Warrant. Within thirty (30) days after Holder exercises this Warrant and the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised and has not expired, a new warrant representing the Shares not so acquired.

1.4 Replacement of Warrants. In the case of loss, theft or destruction of this Warrant, upon delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company at its expense shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.
1.5 Acquisition of the Company

1.5.1 “Acquisition.” For the purpose of this Warrant, “Acquisition” means (a) any sale, license, or other disposition of all or substantially all of the assets (including intellectual property) of the Company, or (b) any reorganization, consolidation, merger, sale of the voting securities of the Company or other transaction or series of related transactions where the holders of the Company’s securities before the transaction or series of related transactions beneficially own less than fifty percent (50%) of the outstanding voting securities of the surviving entity after the transaction or series of related transactions.

1.5.2 Treatment of Warrant in the Event of an Acquisition. The Company shall give Holder written notice at least twenty (20) days prior to the closing of any proposed Acquisition. The Company will use commercially reasonable efforts to cause (i) the acquirer of the Company, (ii) successor or surviving entity or (iii) parent entity in an Acquisition (the “Acquirer”) to assume this Warrant as a part of the Acquisition.

(a) If the Acquirer assumes this Warrant, then this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price shall be adjusted accordingly, and the Warrant Price and number and class of Shares shall continue to be subject to adjustment from time to time in accordance with the provisions hereof.

(b) If the Acquirer refuses to assume this Warrant in connection with the Acquisition, the Company shall give Holder an additional written notice at least ten (10) days prior to the closing of the Acquisition of such fact. In such event, notwithstanding any other provision of this Warrant to the contrary, Holder may immediately exercise this Warrant in the manner specified in this Warrant with such exercise effective immediately prior to closing of the Acquisition. If Holder elects not to exercise this Warrant, then this Warrant will terminate immediately prior to the closing of the Acquisition. Notwithstanding any other provision of this Warrant or the contrary if the Acquirer refuses to assume this Warrant in connection with such Acquisition, then effective as of the date that is ten (10) days prior to the closing of such Acquisition, the Holder shall have the option to elect (i) that the Warrant Price be adjusted, without further action of any party, to $0.01 per share or (ii) to put this Warrant to the Company for a per Share amount equal to the difference between the Acquisition consideration payable for one Share and the Warrant Price. As used herein, an “Excluded Acquisition” means, an Acquisition where the consideration that the holders of the Shares are entitled to receive on account of the Shares consists entirely of cash and/or shares of common stock that are publicly traded on a national exchange and where the shares, if any, receivable by the Holder of this Warrant were the Holder to exercise this Warrant in full immediately prior to the closing of such Acquisition may be publicly re-sold by the Holder in their entirety within the three (3) months following such closing pursuant to Rule 144 or an effective registration statement under the Act.

1.6 Adjustment in Underlying Preferred Stock Price and Warrant Price. This Warrant shall, concurrent with the issuance by the Company of preferred stock to investors after the Issue Date at a price per share that is less than the Warrant Price, automatically be adjusted to instead be exercisable for shares of the same series and class and bearing the same rights, preferences, and privileges of such shares of stock, with the Warrant Price hereunder adjusted to equal the per share purchase price of such stock, and the number of such shares subject to this Warrant adjusted to equal (i) the dollar amount which is the Number of Shares multiplied by the Warrant Price; (ii) divided by such modified per share Warrant Price. Any adjustments pursuant to this Section 1.6 shall be in addition to any adjustments pursuant to Article 2 below.

ARTICLE 2
ADJUSTMENTS TO THE SHARES

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on its common stock payable in common stock, or other securities, or subdivides the outstanding common stock into a greater amount of common stock, then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend or subdivision occurred.
2.2 **Reclassification, Exchange or Substitution.** Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company’s Certificate of Incorporation upon the closing of a registered public offering of the Company’s common stock. The Company or its successor shall promptly issue to Holder a new warrant for such new securities or other property. The new warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price, the number of securities or property issuable upon exercise of the new warrant and expiration date. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 **Adjustments for Combinations, Etc.** If the outstanding Shares are combined or consolidated, by reclassification, reverse split or otherwise, into a lesser Number of Shares, the Warrant Price shall be proportionately increased. If the outstanding Shares are split or multiplied, by reclassification or otherwise, into a greater Number of Shares, the Warrant Price shall be proportionately decreased.

2.4 **Adjustments for Diluting Issuances.** In the event of the issuance (a “Diluting Issuance”) by the Company, after the Issue Date of this Warrant, of securities at a price per share less than the Warrant Price, then the number of shares of common stock issuable upon conversion of the Shares shall be adjusted in accordance with those provisions of the Company’s Certificate of Incorporation, a copy of which is attached hereto as Exhibit B, which apply to Diluting Issuances as if the Shares were outstanding on the date of such Diluting Issuance. The provisions set forth for the Shares in the Company’s Certificate of Incorporation relating to the above in effect as of the Issue Date may not be amended, modified or waived, without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Shares in the same manner as such amendment, modification or waiver affects the rights associated with all other shares of the same series and class as the Shares granted to the Holder. Under no circumstances shall the aggregate Warrant Price payable by the Holder upon exercise of this Warrant increase as a result of any adjustment arising from a Diluting Issuance.

2.5 **No Impairment.** The Company shall not, by amendment of its Certificate of Incorporation or Bylaws or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out all the provisions of this Article 2 and in taking all such action as may be necessary or appropriate to protect Holder’s rights under this Article 2 against dilution or other impairment.

2.6 **Certificate as to Adjustments.** Upon each adjustment of the Warrant Price or number of Shares, the Company at its expense shall promptly compute such adjustment, and furnish Holder with a certificate signed by its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price and number of Shares in effect upon the date thereof and the series of adjustments leading to such Warrant Price and number of Shares.

2.7 **Limitations on Liability.** Nothing contained in this Warrant shall be construed as imposing any liabilities on Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

2.8 **Fractional Shares.** No fractional Shares shall be issuable upon exercise of this Warrant and the Number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise of this Warrant, the Company shall eliminate such fractional share interest by paying Holder an amount in cash computed by multiplying the fractional interest by the fair market value, as determined by the Company’s Board of Directors, of a full Share.
ARTICLE 3
REPRESENTATIONS AND COVENANTS OF THE COMPANY

3.1 Representations and Warranties. The Company hereby represents and warrants to, and agrees with, the Holder as follows:

3.1.1 The initial Warrant Price referenced on the first page of this Warrant is not greater than the fair market value of the Shares as of the date of this Warrant.

3.1.2 This Warrant is and any Warrant issued in substitution for or replacement of this Warrant shall be, upon issuance, duly authorized and validly issued. All Shares which may be issued upon the exercise of the purchase right represented by this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

3.1.3 The Company’s capitalization table delivered to Holder as of the Issue Date is true and complete as of the Issue Date.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (c) to effect any reclassification or recapitalization of stock; or (d) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give Holder (1) at least twenty (20) days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above; and (2) in the case of the matters referred to in (c) and (d) above at least twenty (20) days prior written notice of the date when the same will take place (and specifying the date on which the holders of stock will be entitled to exchange their stock for securities or other property deliverable upon the occurrence of such event). Upon request, the Company shall provide Holder with such information reasonably necessary for Holder to evaluate its rights as a holder of this Warrant or Warrant Shares in the case of matters referred to (a), (b), (c) and (d) herein above.

3.3 Information Rights. So long as the Holder holds this Warrant and/or any of the Shares, the Company shall deliver to the Holder (a) promptly after mailing, copies of all communications, information and/or communiqués to the shareholders of the Company, (b) within one hundred fifty (150) days after the end of each fiscal year of the Company, the annual audited financial statements of the Company certified by independent public accountants of recognized standing and (c) within forty five (45) days after the end of each calendar month through February 2015, and within thirty (30) days after the end of each calendar month thereafter, the Company’s monthly, unaudited financial statements. In addition, and without limiting the generality of the foregoing, so long as the Holder holds this Warrant and/or any of the Shares, the Company shall afford to the Holder the same access to information concerning the Company and its business and financial condition as would be afforded to a holder of the class of Shares under applicable state law and/or any agreement with any holder of the class of Shares.

3.4 Registration Under the Act. The Company agrees that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall be deemed “Registrable Securities” or otherwise entitled to “piggy back” registration rights for registrations initiated by either the Company or a stockholder in accordance with the terms of the that certain Investors’ Rights Agreement between the Company and certain of its shareholder(s) dated as of April 22, 2014 (the “Agreement”), a copy of which is attached hereto as Exhibit C. The Company agrees that no amendments will be made to the Agreement which would have an adverse impact on Holder's registration rights hereunder this provision. Holder shall be deemed to be a party to the Agreement solely for the purpose of the above-mentioned registration rights.
ARTICLE 4
MISCELLANEOUS

4.1 Term; Exercise Upon Expiration. This Warrant is exercisable in whole or in part, at any time and from time to time on or before the Expiration Date set forth above; provided, however, that if the Company completes its initial public offering within the three-year period immediately prior to the Expiration Date, the Expiration Date shall automatically be extended until the third anniversary of the effective date of the Company’s initial public offering. The Company shall give Holder written notice of Holder’s right to exercise this Warrant not less than ninety (90) days before the Expiration Date. If the notice is not so given, the Expiration Date shall automatically be extended until ninety (90) days after the date the Company delivers such notice to Holder. The Company agrees that Holder may terminate this Warrant, upon notice to the Company, at any time in its sole discretion.

4.2 Legends. This Warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR ANY APPLICABLE STATE SECURITIES LAWS, AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 4 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR PURSUANT TO RULE 144 OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

4.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee. The Company shall not require Comerica Bank ("Bank") or a Bank Affiliate (as defined herein) to provide an opinion of counsel or investment representation letter if the transfer is to Bank’s parent company, Comerica Incorporated ("Comerica"), or any other affiliate of Bank ("Bank Affiliate").

4.4 Transfer Procedure. After receipt of the executed Warrant, Bank will transfer all of this Warrant to Comerica Ventures Incorporated, a non-banking subsidiary of Comerica and a Bank Affiliate (“Ventures”). Subject to the provisions of Section 4.3, Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee. The Company shall not require Comerica Bank (“Bank”) or a Bank Affiliate (as defined herein) to provide an opinion of counsel or investment representation letter if the transfer is to Bank’s parent company, Comerica Incorporated (“Comerica”), or any other affiliate of Bank (“Bank Affiliate”).

4.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when: (i) given personally or mailed by first-class registered or certified mail, postage prepaid, or sent via a nationally recognized overnight courier service (such as, but not limited to, Federal Express, DHL or UPS), fee prepaid, or (ii) on the date sent by email or facsimile if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Such communications must be sent to the respective parties at the address or facsimile number as may have been
furnished to the Company or the Holder, as the case may be, in writing by the Company or such Holder from time to time. Effective upon the receipt of executed Warrant and initial transfer described in Article 5.4 above, all notices to the Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Comerica Ventures Incorporated
Attn: Warrant Administrator
1717 Main Street, 5th Floor, MC 6406
Dallas, Texas 75201

All notices to the Company shall be addressed as follows:

EOSHEALTH, INC.
444 N. Michigan Ave., Suite 2880
Chicago, IL 60611

4.6 Amendments; Waiver. This Warrant and any term hereof may be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by the Company or the Holder of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Warrant shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

4.7 Cumulative Remedies. The rights and remedies provided in this Warrant are cumulative and are not exclusive of, and are in addition and not in substitution for, any other rights or remedies available at law, in equity or otherwise.

4.8 No Strict Construction. This Warrant shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

4.9 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its principles regarding conflicts of law.

4.10 Confidentiality. The Company hereby agrees to keep the terms and conditions of this Warrant confidential. Notwithstanding the foregoing confidentiality obligation, the Company may disclose information relating to this Warrant as required by law, rule, regulation, court order or other legal authority, provided that (i) the Company has given Holder at least ten (10) days’ notice of such required disclosure, and (ii) the Company only discloses information that is required, in the opinion of counsel reasonably satisfactory to Holder, to be disclosed.

[Remainder of page left intentionally blank]
APPENDIX I

NOTICE OF EXERCISE

1. The undersigned hereby elects to purchase shares of the stock of EOSHEALTH, INC. pursuant to the terms of the attached Warrant, and tenders herewith payment of the purchase price of such shares in full.

2. Please issue a certificate or certificates representing said shares in the name of the undersigned or in such other name as is specified below:

   Comerica Ventures Incorporated
   Attn: Warrant Administrator
   1717 Main Street, 5th Floor, MC 6406
   Dallas, Texas 75201

3. The undersigned represents it is acquiring the shares solely for its own account and not as a nominee for any other party and not with a view toward the resale or distribution thereof except in compliance with applicable securities laws.

COMERICA VENTURES INCORPORATED or Assignee

(Signature)

(Name and Title)

(Date)

Appendix 1

Page 1
Exhibit C
Registration Rights
Investors’ Rights Agreement (including all amendments thereto) – ATTACHED HERETO

Exhibit C
Page 1
LIVONGO HEALTH, INC.

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this “Agreement”) is dated as of [insert date], and is between Livongo Health, Inc., a Delaware corporation (the “Company”), and [insert name of indemnitee] (“Indemnitee”).

RECITALS

A. Indemnitee’s service to the Company substantially benefits the Company.

B. Individuals are reluctant to serve as directors or officers of corporations or in certain other capacities unless they are provided with adequate protection through insurance or indemnification against the risks of claims and actions against them arising out of such service.

C. Indemnitee does not regard the protection currently provided by applicable law, the Company’s governing documents and any insurance as adequate under the present circumstances, and Indemnitee may not be willing to serve as a director or officer without additional protection.

D. In order to induce Indemnitee to continue to provide services to the Company, it is reasonable, prudent and necessary for the Company to contractually obligate itself to indemnify, and to advance expenses on behalf of, Indemnitee as permitted by applicable law.

E. This Agreement is a supplement to and in furtherance of the indemnification provided in the Company’s certificate of incorporation and bylaws, and any resolutions adopted pursuant thereto, and this Agreement shall not be deemed a substitute therefor, nor shall this Agreement be deemed to limit, diminish or abrogate any rights of Indemnitee thereunder.

The parties therefore agree as follows:

1. Definitions.

   (a) A “Change in Control” shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

      (i) Acquisition of Stock by Third Party. Any Person (as defined below) becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company’s then outstanding securities;

      (ii) Change in Board Composition. During any period of two consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Company’s board of directors, and any new directors (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 1(a)(i), 1(a)(iii) or 1(a)(iv)) whose election by the board of directors or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Company’s board of directors;
(iii) Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity;

(iv) Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company’s assets; and

(v) Other Events. Any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended, whether or not the Company is then subject to such reporting requirement.

For purposes of this Section 1(a), the following terms shall have the following meanings:

(1) “Person” shall have the meaning as set forth in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended; provided, however, that “Person” shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(2) “Beneficial Owner” shall have the meaning given to such term in Rule 13d-3 under the Securities Exchange Act of 1934, as amended; provided, however, that “Beneficial Owner” shall exclude any Person otherwise becoming a Beneficial Owner by reason of (i) the stockholders of the Company approving a merger of the Company with another entity or (ii) the Company’s board of directors approving a sale of securities by the Company to such Person.

(b) “Corporate Status” describes the status of a person who is or was a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise.

(c) “DGCL” means the General Corporation Law of the State of Delaware.

(d) “Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) “Enterprise” means the Company and any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary.

(f) “Expenses” include all reasonable and actually incurred attorneys’ fees, retainers, court costs, transcript costs, fees and costs of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also
include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond or other appeal bond or their equivalent, and (ii) for purposes of Section 12(d), Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement or under any directors’ and officers’ liability insurance policies maintained by the Company. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) “Independent Counsel” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (other than as Independent Counsel with respect to matters concerning Indemnitee under this Agreement, or other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

(h) “Proceeding” means any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, including any appeal therefrom and including without limitation any such Proceeding pending as of the date of this Agreement, in which Indemnitee was, is or will be involved as a party, a potential party, a non-party witness or otherwise by reason of (i) the fact that Indemnitee is or was a director or officer of the Company, (ii) any action taken by Indemnitee or any action or inaction on Indemnitee’s part while acting as a director or officer of the Company, or (iii) the fact that he or she is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification or advancement of expenses can be provided under this Agreement.

(i) Reference to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to any employee benefit plan; references to “serving at the request of the Company” shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as referred to in this Agreement.

2. Indemnity in Third-Party Proceedings. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 2 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 2, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.
3. **Indemnity in Proceedings by or in the Right of the Company.** The Company shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with such proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged by a court of competent jurisdiction to be liable to the Company, unless and only to the extent that the Delaware Court of Chancery or any court in which the proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification for such expenses as the Delaware Court of Chancery or such other court shall deem proper.

4. **Indemnification for Expenses of a Party Who is Wholly or Partly Successful.** To the extent that Indemnitee is a party to or a participant in and is successful (on the merits or otherwise) in defense of any proceeding or any claim, issue or matter therein, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection therewith. For purposes of this section, the termination of any claim, issue or matter in such a proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

5. **Indemnification for Expenses of a Witness.** To the extent that Indemnitee is, by reason of his or her Corporate Status, a witness in any proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection therewith.

6. **Additional Indemnification.**
   
   (a) Notwithstanding any limitation in Sections 2, 3 or 4, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is, or is threatened to be made, a party to or a participant in any proceeding including a proceeding by or in the right of the Company to procure a judgment in its favor against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with the proceeding or any claim, issue or matter therein.
   
   (b) For purposes of Section 6(a), the meaning of the phrase “to the fullest extent permitted by applicable law” shall include, but not be limited to:

   (i) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and
   
   (ii) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

7. **Exclusions.** Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any proceeding (or any part of any proceeding):
(a) for which payment has actually been made to or on behalf of Indemnitee under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of federal, state or local statutory law or common law, if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

(c) for any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Securities Exchange Act of 1934, as amended (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”), or Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

(d) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees, unless (i) the Company’s board of directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (iii) otherwise authorized in Section 12(d) or (iv) otherwise required by applicable law; or

(e) if prohibited by applicable law.

8. Advances of Expenses. The Company shall advance the Expenses incurred by Indemnitee in connection with any Proceeding prior to its final disposition, and such advancement shall be made as soon as reasonably practicable, but in any event no later than 90 days, after the receipt by the Company of a written statement or statements requesting advances from time to time (which shall include invoices received by Indemnitee in connection with such Expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditure made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice). Advances shall be unsecured and interest free and made without regard to Indemnitee’s ability to repay such advances. Indemnitee hereby undertakes to repay any advance to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company. This Section 8 shall not apply to the extent advancement is prohibited by law and shall not apply to any Proceeding (or any part of any Proceeding) for which indemnity is not permitted under this Agreement, but shall apply to any Proceeding (or any part of any Proceeding) referenced in Section 7(b) or 7(c) prior to a determination that Indemnitee is not entitled to be indemnified by the Company.


(a) Indemnitee shall notify the Company in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses as soon as reasonably practicable following the receipt by Indemnitee of notice thereof. The written notification to the Company shall include, in reasonable detail, a description of the nature of the Proceeding and the facts underlying the Proceeding. The failure by Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights, except to the extent that such failure or delay materially prejudices the Company.
(b) If, at the time of the receipt of a notice of a Proceeding pursuant to the terms hereof, the Company has directors’ and officers’ liability insurance in effect that may be applicable to the Proceeding, the Company shall give prompt notice of the commencement of the Proceeding to the insurers in accordance with the procedures set forth in the applicable policies. The Company shall thereafter take all commercially-reasonable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) In the event the Company may be obligated to make any indemnity in connection with a Proceeding, the Company shall be entitled to assume the defense of such Proceeding with counsel approved by Indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed, upon the delivery to Indemnitee of written notice of its election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to the same Proceeding. Notwithstanding the Company’s assumption of the defense of any such Proceeding, the Company shall be obligated to pay the fees and expenses of Indemnitee’s separate counsel to the extent (i) the employment of separate counsel by Indemnitee is authorized by the Company, (ii) counsel for the Company or Indemnitee shall have reasonably concluded that there is a conflict of interest between the Company and Indemnitee in the conduct of any such defense such that Indemnitee needs to be separately represented, (iii) the Company is not financially or legally able to perform its indemnification obligations or (iv) the Company shall not have retained, or shall not continue to retain, counsel to defend such Proceeding. The Company shall have the right to conduct such defense as it sees fit in its sole discretion. Regardless of any provision in this Agreement, Indemnitee shall have the right to employ counsel in any Proceeding at Indemnitee’s personal expense. The Company shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Company.

(d) Indemnitee shall give the Company such information and cooperation in connection with the Proceeding as may be reasonably appropriate.

(c) The Company shall not be liable to indemnify Indemnitee for any settlement of any Proceeding (or any part thereof) without the Company’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

(f) The Company shall not settle any Proceeding (or any part thereof) in a manner that imposes any penalty or liability on Indemnitee without Indemnitee’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed.


(a) To obtain indemnification, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and as is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of the Proceeding. Any delay in providing the request will not relieve the Company from its obligations under this Agreement, except to the extent such failure is prejudicial.

(b) Upon written request by Indemnitee for indemnification pursuant to Section 10(a), a determination with respect to Indemnitee’s entitlement thereto shall be made in the specific case (i) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Company’s board of directors, a copy of which shall be delivered to Indemnitee or (ii) if a Change in Control shall not have occurred, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Company’s board of directors, (B) by a committee of Disinterested Directors designated by a majority vote of
the Disinterested Directors, even though less than a quorum of the Company’s board of directors, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Company’s board of directors, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Company’s board of directors, by the stockholders of the Company. If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within twenty days after such determination. Indemnitee shall cooperate with the person, persons or entity making the determination with respect to Indemnitee’s entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information that is not privileged or otherwise protected from disclosure and that is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys’ fees and disbursements) actually and reasonably incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company, to the extent permitted by applicable law.

(c) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(b), the Independent Counsel shall be selected as provided in this Section 10(c). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Company’s board of directors, and the Company shall give written notice to Indemnitee advising him or her of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Company’s board of directors, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of “Independent Counsel” as defined in Section 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 30 days after the later of (i) submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof and (ii) the final disposition of the Proceeding, the parties have not agreed upon an Independent Counsel, either the Company or Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Company or Indemnitee to the other’s selection of Independent Counsel and for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 10(b) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, the Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(d) The Company agrees to pay the reasonable fees and expenses of any Independent Counsel.


(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement, and the Company shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption.

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(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith to the extent Indemnitee relied in good faith on (i) the records or books of account of the Enterprise, including financial statements, (ii) information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, (iii) the advice of legal counsel for the Enterprise or its board of directors or counsel selected by any committee of the board of directors or (iv) information or records given or reports made to the Enterprise by an independent certified public accountant, an appraiser, investment banker or other expert selected with reasonable care by the Enterprise or its board of directors or any committee of the board of directors. The provisions of this Section 11(c) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(d) Neither the knowledge, actions nor failure to act of any other director, officer, agent or employee of the Enterprise shall be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

12. Remedies of Indemnitee.

(a) Subject to Section 12(c), in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 8 or 12(d) of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10 of this Agreement within 90 days after the later of the receipt by the Company of the request for indemnification or the final disposition of the Proceeding, (iv) payment of indemnification pursuant to this Agreement is not made (A) within twenty days after a determination has been made that Indemnitee is entitled to indemnification or (B) with respect to indemnification pursuant to Sections 4, 5 and 12(d) of this Agreement, within 30 days after receipt by the Company of a written request therefor, or (v) the Company or any other person or entity takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at his or her option, may seek an award in arbitration with respect to his or her entitlement to such indemnification or advancement of Expenses, to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 12(a); provided, however, that the foregoing clause shall not apply in respect of a proceeding brought by Indemnitee to enforce his or her rights under Section 4 of this Agreement. The Company shall not oppose Indemnitee’s right to seek any such adjudication or award in arbitration in accordance with this Agreement.

(b) Neither (i) the failure of the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor (ii) an actual determination by the Company, its board of directors, any committee or
subgroup of the board of directors, Independent Counsel or stockholders that Indemnitee has not met the applicable standard of conduct, shall create a presumption that Indemnitee has or has not met the applicable standard of conduct. In the event that a determination shall have been made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a de novo trial, or arbitration, on the merits, and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12, the Company shall, to the fullest extent not prohibited by law, have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) To the fullest extent not prohibited by law, the Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. If a determination shall have been made pursuant to Section 10 of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee’s statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) To the extent not prohibited by law, the Company shall indemnify Indemnitee against all Expenses that are incurred by Indemnitee in connection with any action for indemnification or advancement of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company to the extent Indemnitee is successful in such action, and, if requested by Indemnitee, shall (as soon as reasonably practicable, but in any event no later than 90 days, after receipt by the Company of a written request therefor) advance such Expenses to Indemnitee, subject to the provisions of Section 8.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification shall be required to be made prior to the final disposition of the Proceeding.

13. **Contribution.** To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amounts incurred by Indemnitee, whether for Expenses, judgments, fines or amounts paid or to be paid in settlement, in connection with (a) any claim relating to an indemnifiable event under this Agreement in which the Company and Indemnitee are held to be jointly liable, (i) all such amounts incurred by Indemnitee and will waive and relinquish any right of contribution it may have against Indemnitee, or (ii) if such contribution is not permissible under applicable law, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (x) the relative benefits received by the Company and Indemnitee as a result of the events and transactions giving rise to such Proceeding; and (y) the relative fault of Indemnitee and the Company (and its other directors, officers, employees and agents) in connection with such events and transactions, or (b) any other claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the events and transactions giving rise to such Proceeding; and (ii) the relative fault of Indemnitee and the Company (and its other directors, officers, employees and agents) in connection with such events and transactions.

14. **Non-exclusivity.** The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any
time be entitled under applicable law, the Company’s certificate of incorporation or bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Company’s certificate of incorporation and bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change, subject to the restrictions expressly set forth herein or therein. Except as expressly set forth herein, no right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. Except as expressly set forth herein, the assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

15. **Primary Responsibility.** The Company acknowledges that Indemnitee may have certain rights to indemnification and advancement of expenses provided by third parties (collectively, the “Secondary Indemnitor”). The Company agrees that, as between the Company and the Secondary Indemnitors, the Company is primarily responsible for amounts required to be indemnified or advanced under the Company’s certificate of incorporation or bylaws or this Agreement and any obligation of the Secondary Indemnitors to provide indemnification or advancement for the same amounts is secondary to those Company obligations. To the extent not in contravention of any insurance policy or policies providing liability or other insurance for the Company or any director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, the Company waives any right of contribution or subrogation against the Secondary Indemnitors with respect to the liabilities for which the Company is primarily responsible under this Section 15. In the event of any payment by the Secondary Indemnitors of amounts otherwise required to be indemnified or advanced by the Company under the Company’s certificate of incorporation or bylaws or this Agreement, the Secondary Indemnitors shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee for indemnification or advancement of expenses under the Company’s certificate of incorporation or bylaws or this Agreement or, to the extent such subrogation is unavailable and contribution is found to be the applicable remedy, shall have a right of contribution with respect to the amounts paid; provided, however, that the foregoing sentence will be deemed void if and to the extent that it would violate any applicable insurance policy. The Secondary Indemnitors are express third-party beneficiaries of the terms of this Section 15.

16. **No Duplication of Payments.** Subject to any subrogation rights set forth in Section 15, the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received payment for such amounts under any insurance policy, contract, agreement or otherwise.

17. **Insurance.** To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, trustees, general partners, managing members, officers, employees, agents or fiduciaries of the Company or any other Enterprise, Indemnitee shall be covered by such policy or policies to the same extent as the most favorably-insured persons under such policy or policies in a comparable position.

18. **Subrogation.** In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

19. **Services to the Company.** Indemnitee agrees to serve as a director or officer of the Company or, at the request of the Company, as a director, trustee, general partner, managing member, officer, employee,
agent or fiduciary of another Enterprise, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his or her resignation or is removed from such position. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in such position. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee. Indemnitee specifically acknowledges that any employment with the Company (or any of its subsidiaries or any Enterprise) is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, with or without notice, except as may be otherwise expressly provided in any executed, written employment contract between Indemnitee and the Company (or any of its subsidiaries or any Enterprise), any existing formal severance policies adopted by the Company’s board of directors or, with respect to service as a director or officer of the Company, the Company’s certificate of incorporation or bylaws or the DGCL. No such document shall be subject to any oral modification thereof.

20. **Duration.** This Agreement shall continue until and terminate upon the later of (a) ten years after the date that Indemnitee shall have ceased to serve as a director or officer of the Company or as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of any other Enterprise, as applicable; or (b) one year after the final termination of any Proceeding, including any appeal, then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 12 of this Agreement relating thereto.

21. **Successors.** This Agreement shall be binding upon the Company and its successors and assigns, including any direct or indirect successor, by purchase, merger, consolidation or otherwise, to all or substantially all of the business or assets of the Company, and shall inure to the benefit of Indemnitee and Indemnitee’s heirs, executors and administrators. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

22. **Severability.** Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company’s inability, pursuant to court order or other applicable law, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (ii) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

23. **Enforcement.** The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.
24. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Company’s certificate of incorporation and bylaws and applicable law.

25. **Modification and Waiver.** No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by the parties hereto. No amendment, alteration or repeal of this Agreement shall adversely affect any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. No waiver of any of the provisions of this Agreement shall constitute or be deemed a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

26. **Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, sent by facsimile or electronic mail or otherwise delivered by hand, messenger or courier service addressed:

(a) if to Indemnitee, to Indemnitee’s address, facsimile number or electronic mail address as shown on the signature page of this Agreement or in the Company’s records, as may be updated in accordance with the provisions hereof; or

(b) if to the Company, to the attention of the Chief Executive Officer or Chief Financial Officer of the Company at Livongo Health, Inc., 444 N. Michigan Ave. Suite 3400, Chicago, IL 60611, or at such other current address as the Company shall have furnished to Indemnitee, with a copy (which shall not constitute notice) to Mark Baudler at Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road, Palo Alto, California 94304.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given (i) if delivered by hand, messenger or courier service, when delivered (or if sent via a nationally-recognized overnight courier service, freight prepaid, specifying next-business-day delivery, one business day after deposit with the courier), (ii) if sent via mail, at the earlier of its receipt or five days after the same has been deposited in a regularly-maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid, or (iii) if sent via facsimile, upon confirmation of facsimile transfer or, if sent via electronic mail, upon confirmation of delivery when directed to the relevant electronic mail address, if sent during normal business hours of the recipient, or if not sent during normal business hours of the recipient, then on the recipient’s next business day.

27. **Applicable Law and Consent to Jurisdiction.** This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court of Chancery, and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, Cogency Global Inc. as its agent in the State of Delaware as such party’s agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court of Chancery, and
(v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court of Chancery has been brought in an improper or inconvenient forum.

28. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature and in counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

29. **Captions.** The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

*(signature page follows)*

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The parties are signing this Indemnification Agreement as of the date stated in the introductory sentence.

LIVONGO HEALTH, INC.

____________________________________
(Signature)

____________________________________
(Print name)

____________________________________
(Title)

[INSERT INDEMNITEE NAME]

____________________________________
(Signature)

____________________________________
(Print name)

____________________________________
(Street address)

____________________________________
(City, State and ZIP)
EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is made as of March 6, 2019 (the "Effective Date"), by and between Livongo Health, Inc., a Delaware corporation ("Company"), and Zane Burke, an individual ("Executive").

RECITALS

WHEREAS, Company desires to employ Executive as the Chief Executive Officer of Company as of the Commencement Date and for Executive to serve as a member of the Board of Directors of the Company as of the Commencement Date, subject to the terms and conditions of this Agreement;

WHEREAS, Executive desires to be employed by Company in the aforesaid capacity and serve as a member of the Board of Directors of the Company, subject to the terms and conditions of this Agreement; and

WHEREAS, the Company and the Executive have entered into, or intend to enter into, a Restricted Stock Award Agreement in substantially the form attached hereto as Exhibit A (the "RSA Agreement").

NOW, THEREFORE, in consideration of the foregoing premises, of the mutual agreements and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows, effective as of the Effective Date:

AGREEMENT

1. Employment

Company hereby agrees to employ Executive, and Executive hereby accepts employment, as Chief Executive Officer of Company, pursuant to the terms of this Agreement. Executive shall have the duties and responsibilities and perform such administrative and managerial services customary to the position of Chief Executive Officer and as are set forth in the bylaws of the Company (the "Bylaws") or as shall be reasonably delegated or assigned to Executive by the Executive Chairman of the Company (the "Executive Chairman") and Board of the Directors of the Company (the "Board") from time to time. Executive shall report directly to the Executive Chairman. Executive shall devote a substantial portion of his business time to his responsibilities hereunder, provided that Executive shall be entitled to devote time to outside boards of directors, outside business activities, personal investments, civic and charitable activities, and personal education and development so long as such activities do not create a conflict with Executive’s employment hereunder or materially interfere with the performance of Executive’s duties. Additionally, upon approval by the Board and Company’s stockholders, Executive shall be designated to serve on the Board during the Employment Period (defined below).
2. Commencement Date and Term.

The parties acknowledge that Executive’s employment relationship with the Company is at-will. Either Executive or the Company may terminate the employment relationship at any time, with or without Cause. The provisions in Section 4.5 govern the amount of compensation, if any, to be provided to Executive upon termination of employment and do not alter this at-will status. The period from the commencement of Executive’s employment by the Company on February 18, 2019 (the “Commencement Date”) until the time that the Executive’s employment relationship is terminated by either Executive or the Company is referred to herein as the “Employment Period”.

3. Compensation and Benefits.

In consideration for the services Executive shall render under this Agreement, Company shall provide or cause to be provided to Executive the following compensation and benefits:

3.1 Base Salary. During the Employment Period, Company shall pay to Executive an annual base salary at a rate of $350,000 per annum, subject to all required federal and state withholding taxes, which base salary shall be payable in accordance with Company’s normal payroll practices and procedures (but no less frequently than monthly). Executive’s base salary shall be reviewed annually prior to the beginning of each fiscal year of Company during the Employment Period by the Board, or a committee of the Board, and may be increased in the sole discretion of the Board, or such committee of the Board, based on Executive’s performance during the preceding Fiscal Year. For purposes of this Agreement, the term “Fiscal Year” shall mean the fiscal year of Company. Executive’s base salary, as such base salary may be increased hereunder, is hereinafter referred to as the “Base Salary.”

3.2 Performance Bonus. During each Fiscal Year during the Employment Period, Executive shall be eligible to receive cash bonuses in accordance with this Section 3.2 (each a “Performance Bonus”). Payment of any Performance Bonus will be subject to the sole discretion of the Board, or a committee of the Board, and the amount of any such Performance Bonus will be determined by, and based upon criteria selected by, the Board or such committee. Executive’s target Performance Bonus shall be fifty percent (50%) of his Base Salary (the “Target Performance Bonus”). No portion of the Performance Bonus is guaranteed; however, if awarded by the Board or a committee of the Board, the Performance Bonus shall be paid at the same time as similar bonuses are paid to other senior executives.

3.3 Benefits. During the Employment Period and as otherwise provided hereunder, Executive shall be entitled to the following:

3.3.1 Participation in Benefit Plans. Executive shall be entitled to health and/or dental benefits, including immediate coverage for Executive and his eligible dependents, which are generally available to Company’s senior executive employees and as provided by Company in accordance with its group health insurance plan coverage. In addition, Executive shall be entitled to participate in any profit sharing plan, retirement plan, group life insurance plan or other insurance plan or medical expense plan maintained by Company for its senior executives generally, in accordance with the general eligibility criteria therein.
3.3.2 **Perquisites.** Executive shall be entitled to such other benefits and perquisites that are generally available to Company’s senior executive employees and as provided in accordance with Company’s plans, practices, policies and programs for senior executive employees of Company.

3.3.3 **Indemnification.** To the fullest extent permissible under applicable law, Executive shall be entitled to indemnification (including immediate advancement of all legal fees with respect to any claim for indemnification) and director and officers’ insurance coverage (which insurance Employer shall maintain during the Employment Period), to the extent made available to other directors and senior executives, in accordance with the certificate of incorporation and the Bylaws and all other applicable policies and procedures of Company for expenses incurred or damages paid or payable by Executive with respect to a claim against Executive based on actions or inactions by Executive in his capacity as a senior executive or director of Company.

3.4 **Expenses.** Company shall reimburse Executive for proper and necessary expenses incurred by Executive in the performance of his duties under this Agreement from time to time upon Executive’s submission to Company of invoices of such expenses in reasonable detail and subject to all standard policies and procedures of Company with respect to such expenses.

3.5 **Equity-Based Awards.**

3.5.1 **RSA Grant.** Company will recommend to the Compensation Committee of the Board that the Executive be granted a Restricted Stock Award of 1,964,603 shares of Livongo Common Stock, as set forth in the RSA Agreement (the “Restricted Stock Award”). The Restricted Stock Award will be subject to the terms and conditions of the Livongo Health, Inc. 2014 Stock Incentive Plan, as well as the vesting schedule and other terms and conditions of the RSA Agreement.

3.5.2 Executive shall also be eligible to participate in any applicable equity-based bonus, option or similar plan implemented by Company and generally available to its senior executive employees. The amount of any awards made thereunder shall be in the sole discretion of the Board or a committee of the Board.

4. **Termination of the Services.**

Executive’s employment hereunder and the Employment Period may be terminated at any time as follows (the effective date of such termination hereinafter referred to as the “Termination Date”).

4.1 **Termination upon Death or Disability of Executive.**

4.1.1 Executive’s employment hereunder and the Employment Period shall terminate immediately upon the death of Executive. In such event, all rights of Executive and/or Executive’s estate (or named beneficiary) shall cease except for the right to receive payment of the amounts set forth in Section 4.5.3 of the Agreement and any Restricted Stock Award vested under the RSA Agreement.
4.1.2 Company may terminate Executive’s employment hereunder and the Employment Period upon the disability of Executive. For purposes of this Agreement, Executive shall be deemed to be “disabled” if Executive suffers any physical or mental incapacity that renders him unable to engage in any substantial gainful activity by reason of any medically-determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, as determined by Company in good faith. In the event of a dispute as to whether Executive is disabled, Company may refer Executive to a licensed practicing physician who is mutually acceptable to Executive and Company, and Executive agrees to submit to such tests and examination as such physician shall deem appropriate to determine Executive’s capacity to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months. In such event, the parties hereby agree that the decision of such physician as to the disability of Executive shall be final and binding on the parties. Any termination of the Employment Period under this Section 4.1.2 shall be effected without any adverse effect on Executive’s rights to receive benefits under any disability policy of Company, but shall not be treated as a termination without Cause.

4.2 Termination by Company for Cause. Company may terminate Executive’s employment hereunder and the Employment Period for Cause (as defined herein) upon written notice to Executive, which termination shall be effective on the date specified by Company in such notice. For purposes of this Agreement, the term “Cause” shall mean:

4.2.1 the willful failure, disregard or refusal by Executive to perform his duties and obligations hereunder (other than any such failure resulting from the disability of Executive), which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by the Company;

4.2.2 Executive’s conviction (or entry of a nolo contendere plea) of a crime or offense (i) constituting a felony or involving fraud or moral turpitude or (ii) involving the property of Company that results in a material loss to Company; provided that, in the event that Executive is arrested or indicted for such a crime or offense, then Company may, at its option, place Executive on paid leave of absence, pending the final outcome of such arrest or indictment;

4.2.3 any act of fraud or embezzlement with respect to Company or its business relations, or Executive’s violation of any law, which act or violation in the reasonable judgment of the Board is materially and demonstrably injurious to the operations or financial condition of Company;

4.2.4 Executive’s material breach of any agreement with Company, which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by the Company; or

4.2.5 Executive’s willful failure or refusal to follow the Executive Chairman’s and/or Board’s reasonable and lawful instructions consistent with this Agreement, which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by the Company; provided, however, that no act or failure to act on Executive’s part shall be considered “willful” unless it is done, or omitted to be done, by Executive in bad faith or without Executive’s reasonable belief that his action or omission was in the best interests of the Company.
4.3 Termination without Cause; Termination by Executive without Good Reason. Executive may terminate his employment and the Employment Period at any time for any reason upon thirty (30) days’ prior written notice to Company. Company may terminate Executive’s employment and the Employment Period without Cause, upon written notice to Executive. Upon termination of Executive’s employment with Company for any reason, Executive shall be deemed to have resigned from all positions with the Company and its subsidiaries and the Board (provided that any such deemed resignations shall not affect Executive’s entitlement (if any) to Severance Payment and benefits hereunder).

4.4 Termination by Executive for Good Reason.

4.4.1 Executive may terminate Executive’s employment and the Employment Period, in accordance with the process set forth below for Good Reason. For purposes of this Agreement “Good Reason” shall mean the occurrence of any of the following after the Effective Date:

(i) a failure of Company to meet its obligations in any material respect under this Agreement, including, without limitation, (x) a reduction in the Base Salary or Target Performance Bonus percentage without Executive’s prior written consent, or (y) any failure to pay the Base Salary or earned and owed Performance Bonus (other than, in the case of clause (y), the inadvertent failure to pay a de minimis amount of the Base Salary or earned and owed Performance Bonus, which payment is immediately made by Company upon notice from Executive), or (z) Company’s Board of Directors and/or stockholders refusal or failure to designate Executive as a Director of Company within thirty (30) days of the Commencement Date; or

(ii) a material diminution or other substantial adverse alteration in the nature or scope of Executive’s authority, duties and responsibilities with Company set forth in this Agreement, including without limitation any requirement that Executive directly report to any person or entity other than Executive Chairman or Board.

4.4.2 Upon the occurrence of an event constituting Good Reason, Executive shall have the right to terminate his employment hereunder and receive the benefits set forth in Section 4.5 below, upon delivery of written notice to Company no later than the close of business on the sixtieth (60th) day following the date of the first occurrence of the event or condition that would constitute Good Reason; provided, however, that such termination shall not be effective before the expiration of thirty (30) days after receipt by Company of such written notice (the “Cure Period”) if Company has not cured such Good Reason within the Cure Period. If Company so effects a cure, the Good Reason notice shall be deemed rescinded and of no force or effect. Executive must terminate employment as a result of a Good Reason no later than thirty (30) days after the lapse of the Cure Period, and the effective date of a Good Reason termination shall be the date of Executive’s “separation from service” (within the meaning of Treas. Reg. Section 1.409A-1(h)).
4.5 Rights upon Termination. Upon termination of Executive's employment and the Employment Period, the following shall apply:

4.5.1 Termination by Company Without Cause or by Employee for Good Reason. If Company terminates Executive's employment and the Employment Period without Cause, or if Executive terminates Executive's employment and the Employment Period for Good Reason, Executive shall be entitled to receive payment of the Accrued Amounts in one lump sum no later than ten (10) days after the Termination Date. "The term 'Accrued Amounts' means (A) any Base Salary amounts that have been accrued but have not yet been paid as of the Termination Date, (B) any earned but unpaid Performance Bonus with respect to the Fiscal Year preceding the Fiscal Year in which the Termination Date occurs, calculated at a comparable percentage as other executives if unpaid Performance Bonus has not yet been declared when the Termination Date occurs, (C) any reimbursement for any expense reimbursable under this Agreement, and (D) any vested benefits (including vested Restricted Stock Awards under the RSA Agreement) payable to Executive hereunder accrued through the Termination Date. In addition, subject to Section 4.7 below, Company shall, subject to Section 7.14, be obligated to pay Executive (or provide Executive with), as severance, an amount equal to three-quarters (0.75) of Executive's Base Salary (the "Severance Payment"), payable in nine (9) equal monthly installments commencing on the date the Release (as defined in Section 4.7) becomes irrevocable, and will be payable regardless of whether Executive obtains other employment and is compensated therefor (but only so long as Executive is not in violation of Section 5 hereof).

4.5.2 Termination With Cause by Company or Without Good Reason by Executive. If Company terminates Executive's employment and the Employment Period with Cause, or if Executive terminates Executive's employment and the Employment Period other than as a result of a Good Reason, Company shall, subject to Section 7.14, be obligated to pay Executive the Accrued Amounts in one lump sum no later than ten (10) days after the Termination Date.

4.5.3 Termination Upon Death or Disability. If Executive's employment and the Employment Period are terminated because of the death or disability of Executive, Company shall, subject to Section 7.14, be obligated to pay Executive or, if applicable, Executive's estate, the Accrued Amounts in one lump sum no later than ten (10) days after the Termination Date.

4.6 Effect of Notice of Termination. Any notice of termination by Company, whether for Cause or without Cause, may specify that, during the notice period, if any, Executive need not attend to any business on behalf of Company.

4.7 Requirement of a Release; Exclusivity of Severance Payments under this Agreement. As a condition to the receipt of the Severance Payments to be provided to Executive pursuant to Section 4.5.1 upon termination of Executive's employment, Executive shall (i) execute and deliver to Company a general release of employment claims against Company and its affiliates in a form reasonably satisfactory to Company (the "Release") within forty-five (45) days following the Termination Date, provided that Executive shall not be required to release any rights to Severance Payments and termination benefits under Section 4 of this Agreement, any vested rights to compensation or benefits which Executive may have as of the Termination Date or any indemnification or related rights under Company's certificate of incorporation and Bylaws or under any indemnification agreement between Company and Executive or any rights under any
director and officer liability insurance policy maintained by Company for the benefit of Executive, and (ii) continue to comply with the restrictive covenants set forth in the Employee Proprietary Information, Inventions Assignment and Non-Solicitation Agreement attached hereto as Exhibit B (the “Restrictive Covenant Agreement”). In the event Executive breaches any material provision of the Restrictive Covenant Agreement, all Severance Payments and termination benefits under this Section 4 shall cease immediately and Executive shall forfeit his right to any future Severance Payments. In addition, the Severance Payments and termination benefits to be provided to Executive pursuant to this Section 4 upon termination of Executive’s employment shall constitute the exclusive payments in the nature of severance or termination pay or salary continuation which shall be due to Executive upon a termination of employment and shall be in lieu of any other such compensation payments under any severance plan, program, policy or other arrangement which has heretofore been or shall hereafter be established by Company or any of its affiliates, other than payments to Executive related to any future retention or incentive plan, or under any indemnification or related rights under Company’s certificate of incorporation and Bylaws or under any indemnification agreement between Company and Executive or under any director and officer liability insurance policy maintained by Company for the benefit of Executive.

5. Proprietary Information, Inventions Assignment and Non-Solicitation Agreement.

Executive expressly acknowledges and agrees that, as a condition to Executive’s employment with Company pursuant to this Agreement, Executive shall execute the Employee Proprietary Information, Inventions Assignment and Non-Solicitation Agreement attached hereto as Exhibit B and comply with the provisions thereof.

6. No Set-Off or Mitigation.

Company’s obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which Company may have against Executive or others. In no event shall Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Executive under any of the provisions of this Agreement and, except as otherwise provided herein, such amounts shall not be reduced whether or not Executive obtains other employment.

7. Miscellaneous.

7.1 Valid Obligation. This Agreement has been duly authorized, executed and delivered by Company and has been duly executed and delivered by Executive and is a legal, valid and binding obligation of Company and of Executive, enforceable in accordance with its terms.

7.2 No Conflicts. Executive represents and warrants that the performance by him of his duties hereunder will not violate, conflict with, or result in a breach of any provision of, any agreement to which he is a party.

7.3 Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Illinois, without reference to Illinois choice of law statutes or decisions.
7.4 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity or enforceability of any other provision. In the event any clause of this Agreement is deemed to be invalid, the parties shall endeavor to modify that clause in a manner which carries out the intent of the parties in executing this Agreement.

7.5 No Waiver. The waiver of a breach of any provision of this Agreement by any party shall not be deemed or held to be a continuing waiver of such breach or a waiver of any subsequent breach of any provision of this Agreement or as nullifying the effectiveness of such provision, unless agreed to in writing by the parties.

7.6 Notices. All demands, notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be personally delivered or by commercial overnight delivery service, to the parties at the addresses set forth below:

To Company: Livongo Health, Inc.
444 N. Michigan Avenue, Ste. 3400
Chicago IL 60611
Attention: Legal Team

To Executive: Zane Burke
[________________________
Or, if the above is blank, to the address most recently included in Company’s records.

Notices shall be deemed given upon the earliest to occur of (i) receipt by the party to whom such notice is directed, if hand delivered or (ii) on the first business day (other than a Saturday, Sunday or legal holiday in the jurisdiction to which such notice is directed) following the day the same is deposited with the commercial carrier if sent by commercial overnight delivery service. Each party, by notice duly given in accordance therewith may specify a different address for the giving of any notice hereunder.

7.7 Assignment of Agreement. This Agreement shall be binding upon and inure to the benefit of Executive and Company, their respective successors and permitted assigns and Executive’s heirs and personal representatives. Neither party may assign any rights or obligations hereunder to any person or entity without the prior written consent of the other party. This Agreement shall be personal to Executive for all purposes.

7.8 Entire Agreement; Amendments. Except as otherwise provided herein, this Agreement contains the entire understanding between the parties, and there are no other agreements or understandings between the parties with respect to Executive’s employment by Company and his obligations thereto other than Executive’s indemnification or related rights under Company’s certificate of incorporation and Bylaws or under any indemnification agreement between Company and Executive, and Executive’s rights under the RSA Agreement (including the Restricted Stock Award) and any other equity incentive plans or bonus plans of Company. Executive acknowledges that he is not relying upon any representations or warranties concerning
his employment by Company except as expressly set forth herein. No amendment or modification to the Agreement shall be valid except by a
subsequent written instrument that (i) explicitly states the intent of both parties hereto to supplement the terms herein and (ii) is signed by both parties
hereto.

7.9 Dispute Resolution and Arbitration. The following procedures shall be used in the resolution of disputes:

  7.9.1 Dispute. In the event of any dispute or disagreement between the parties under this Agreement, the disputing party shall provide
written notice to the other party that such dispute exists. The parties will then make a good faith effort to resolve the dispute or disagreement. If the
dispute is not resolved upon the expiration of fifteen (15) days from the date a party receives such notice of dispute, the entire matter shall then be
submitted to arbitration as set forth in Section 7.9.2.

  7.9.2 Arbitration. If the dispute or disagreement between the parties has not been resolved in accordance with the provisions of
Section 7.9.1 above, then, except for disputes relating to the Restrictive Covenant Agreement described in Section 5 or the Restricted Stock Award
(whether such dispute arises under this Agreement, the RSA Agreement or the 2014 Employee Stock Incentive Plan), any such controversy or claim
arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration to be held in Chicago, Illinois, in accordance with the
rules of the American Arbitration Association then in effect. Any decision rendered herein shall be final and binding on each of the parties and
judgment may be entered thereon in the appropriate state or federal court. The arbitrators shall be bound to strict interpretation and observation of the
terms of this Agreement. The prevailing party in such dispute shall be entitled to reimbursement from the other party of all reasonable costs and
expenses incurred in connection with the arbitration and any enforcement of such decision, including, without limitation, attorney’s fees and costs.

7.10 Survival. For avoidance of doubt, the provisions of Sections 4.5, 4.7, 5, 6 and 7 of this Agreement shall survive the expiration or earlier
termination of the Employment Period.

7.11 Headings. Section headings used in this Agreement are for convenience of reference only and shall not be used to construe the meaning of
any provision of this Agreement.

7.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall
constitute one and the same instrument.

7.13 Taxes. Subject to the terms of Section 7.15, Executive shall be solely responsible for taxes imposed on Executive by reason of any
compensation and benefits provided under this Agreement and all such compensation and benefits shall be subject to applicable withholding.

7.14 Section 409A of the Code. It is intended that this Agreement will comply with Section 409A of the Code, to the extent the Agreement is
subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If an amendment of the Agreement is necessary in order
for it to comply with Section 409A, the parties hereto will negotiate in good faith to amend the Agreement in a manner that preserves the original
intent of the parties to the extent reasonably possible. No action or failure by the Company in good faith to act, pursuant to this Section 7.14, shall
subject the Company to any claim, liability, or expense, and the Company shall not have any obligation to indemnify or otherwise protect the
Executive from the obligation to pay any taxes pursuant to Section 409A.

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In addition, notwithstanding any provision to the contrary in this Agreement, if Executive is deemed on the date of his “separation from service” (within the meaning of Treas. Reg. Section 1.409A-1(h)) to be a “specified employee” (within the meaning of Treas. Reg. Section 1.409A-1(i)), then with regard to any payment that is required to be delayed pursuant to Section 409A(a)(2)(B) of the Code (the “Delayed Payments”), such payment shall not be made prior to the earlier of (i) the expiration of the six (6) month period measured from the date of his “separation from service” and (ii) the date of his death. Any payments due under this Agreement other than the Delayed Payments shall be paid in accordance with the normal payment dates specified herein. In no case will the delay of any of the Delayed Payments by Company constitute a breach of Company’s obligations under this Agreement. For the provision of payments and benefits under this Agreement upon termination of employment, reference to Executive’s “termination of employment” (and corollary terms) with Company shall be construed to refer to Executive’s “separation from service” from Company in tandem with Executive’s termination of employment with Company. For purposes of this Agreement, all rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Section 409A of the Code.

In addition, to the extent that any reimbursement or in-kind benefit under this Agreement or under any other reimbursement or in-kind benefit plan or arrangement in which Executive participates during the term of Executive’s employment under this Agreement or thereafter provides for a “deferral of compensation” within the meaning of Section 409A of the Code, (i) the amount eligible for reimbursement or in-kind benefit in one calendar year may not affect the amount eligible for reimbursement or in-kind benefit in any other calendar year (except that a plan providing medical or health benefits may impose a generally applicable limit on the amount that may be reimbursed or paid), (ii) the right to reimbursement or an in-kind benefit is not subject to liquidation or exchange for another benefit, and (iii) subject to any shorter time periods provided herein, any such reimbursement of an expense or in-kind benefit must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred.

If the sixty (60)-day period following a “separation from service” begins in one calendar year and ends in a second calendar year (a “Crossover 60-Day Period”), then any Severance Payments contingent upon the Release and that would otherwise occur during the portion of the Crossover 60-Day Period that falls within the first year will be delayed and paid in a lump sum during the portion of the Crossover 60-Day Period that falls within the second year.

7.15 280G Excise Tax. If a payment or transfer by the Company to or for the benefit of Executive (a “Payment”) that is subject to taxation under Code Section 4999 or ineligible for deduction by the Company as an “excess parachute payment” as defined in Code Section 280G is triggered by a Sale of the Company, if so agreed by Company and Executive, the Payment may be presented to the Company’s shareholders for a vote, with full disclosure of all material facts about the Payment. If the Payment is approved by the vote of shareholders who owned (before
the Sale of the Company) more than 75 percent (75%) of the voting power of all of the Company’s outstanding stock and the disclosure and other procedures are otherwise in compliance with Code Section 280G(b)(5) and other applicable Department of Treasury regulations promulgated under IRC Section 280G, then the Payment may proceed under the exemption set forth in Code Section 280G(b)(5), provided that if reliance upon such exemption is not proper under such Code Section, Company shall indemnify and reimburse Employee for any excise tax required to be paid by Employee.

[Signatures continued on next page]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written, to be effective at the Effective Date.

EXECUTIVE

/s/ Zane Burke
Zane Burke

LIVONGO HEALTH, INC.

By: /s/ Glen Tullman
Name: Glen Tullman
Executive Chairman
EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this “Agreement”) is made as of this 22nd day of April, 2014, to be effective as of April 22, 2014 (the “Effective Date”), by and between EosHealth, Inc., a Delaware corporation (“Company”), and Glen E. Tullman, an individual resident in the State of Illinois (“Executive”).

RECITALS

WHEREAS, Company desires to employ Executive as the Chief Executive Officer of Company and for Executive to serve as a member of the Board of Directors of Company as of the Effective Date, subject to the terms and conditions of this Agreement; and

WHEREAS, Executive desires to be employed by Company in the aforesaid capacity and serve as a member of the Board of Directors of the Company, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, of the mutual agreements and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows, effective as of the Effective Date:

AGREEMENT

1. Employment

Company hereby agrees to employ Executive, and Executive hereby accepts employment, as Chief Executive Officer of Company, pursuant to the terms of this Agreement. Executive shall have the duties and responsibilities and perform such administrative and managerial services customary to the position of Chief Executive Officer and as are set forth in the bylaws of Company (the “Bylaws”) or as shall be reasonably delegated or assigned to Executive by the Board of Directors of Company (the “Board”) from time to time. Executive shall report directly to the Board. Executive shall devote a substantial portion of his business time to his responsibilities hereunder; provided that Executive shall be entitled to devote time to outside boards of directors, outside business activities, personal investments, civic and charitable activities, and personal education and development so long as such activities do not create a conflict with Executive’s employment hereunder or materially interfere with the performance of Executive’s duties. Additionally, Executive shall be designated to serve on the Board during the time he is employed by Company. Executive will be based at the Company’s offices located in Chicago, Illinois.

2. Effective Date and Term

The parties acknowledge that Executive’s employment relationship with the Company is at-will. Either Executive or the Company may terminate the employment relationship at any time, with or without Cause. The provisions in Section 4.5 govern the amount of compensation, if any, to be provided to Executive upon termination of employment and do not alter this at-will status. The period from the commencement of Executive’s employment by the Company on the Effective Date until the time that the Executive’s employment relationship is terminated by either Executive or the Company is referred to herein as the “Employment Period”.

3. Compensation and Benefits

In consideration for the services Executive shall render under this Agreement, Company shall provide or cause to be provided to Executive the following compensation and benefits:

3.1 Base Salary During the Employment Period, Company shall pay to Executive an annual base salary at a rate of $300,000 per annum, subject to all appropriate federal and state withholding taxes, which base salary shall be payable in accordance with Company’s normal payroll practices and procedures (but no less frequently than monthly). Executive’s base salary shall be reviewed annually prior to the beginning of each fiscal year of Company during the Employment Period by the Board, or a committee of the Board, and may be increased in the sole discretion of the Board, or such committee of the Board, based on Executive’s performance during the preceding Fiscal Year. For purposes of this Agreement, the term “Fiscal Year” shall mean the fiscal year of Company. Executive’s base salary, as such base salary may be increased hereunder, is hereinafter referred to as the “Base Salary.”
3.2 Performance Bonus. Executive shall be eligible to receive cash bonuses in accordance with this Section 3.2 (each a “Performance Bonus”). Payment of any Performance Bonus will be subject to the sole discretion of the Board or a committee of the Board, and the amount of any such Performance Bonus will be determined by, and based upon criteria selected by, the Board or such committee. Executive’s target Performance Bonus shall be fifty percent (50%) of his Base Salary (the "Target Performance Bonus"), but may, based on exceptional performance at the sole discretion of the Board, exceed such amount. No portion of the Performance Bonus is guaranteed, however if awarded by the Board or a committee of the Board, the Performance Bonus shall be paid at the same time as similar bonuses are paid to other senior executives (but in no event later than two and one-half (2-1/2) months after the end of the Fiscal Year to which the Performance Bonus relates); provided, however, in the event of a change in Fiscal Year, the performance criteria and payment terms shall be equitably adjusted.

3.3 Benefits. During the Employment Period and as otherwise provided hereunder, Executive shall be entitled to the following:

3.3.1 Vacation. Executive shall be entitled to three (3) weeks per Fiscal Year of vacation, such vacation not to be cumulative (i.e., vacation not taken in any Fiscal Year shall not be carried forward and used in any subsequent Fiscal Year).

3.3.2 Participation in Benefit Plans. Executive shall be entitled to health and/or dental benefits, including immediate coverage for Executive and his eligible dependents, which are generally available to Company’s senior executive employees and as provided by Company in accordance with its group health insurance plan coverage. In addition, Executive shall be entitled to participate in any profit sharing plan, retirement plan, group life insurance plan or other insurance plan or medical expense plan maintained by Company for its senior executives generally, in accordance with the general eligibility criteria therein.

3.3.3 Perquisites. Executive shall be entitled to such other benefits and perquisites that are generally available to Company’s senior executive employees and as provided in accordance with Company’s plans, practices, policies and programs for senior executive employees of Company.

3.3.4 Indemnification. To the fullest extent permissible under applicable law, Executive shall be entitled to indemnification (including immediate advancement of all legal fees with respect to any claim for indemnification) and director and officers’ insurance coverage, to the extent made available to other directors and senior executives, in accordance with the certificate of incorporation or Bylaws and all other applicable policies and procedures of Company for expenses incurred or damages paid or payable by Executive with respect to a claim against Executive based on actions or inactions by Executive in his capacity as a senior executive or director of Company. Executive shall also be entitled to indemnification pursuant to the Indemnification Agreement entered into by the Company and Executive on or about the date hereof (the “Indemnification Agreement”).

3.4 Expenses. Company shall reimburse Executive for proper and necessary expenses incurred by Executive in the performance of his duties under this Agreement from time to time upon Executive’s submission to Company of invoices of such expenses in reasonable detail and subject to all standard policies and procedures of Company with respect to such expenses.

3.5 Equity Interests. Executive shall be entitled to the following:

3.5.1 Option Grant. Company has, prior to the date of this Agreement, granted Executive the option to purchase shares of the common stock, par value $0.001 per share, of the Company equal to 5.0% of the fully-diluted shares of the Company as of the grant date (the “Initial Option”). As promptly as is practicable following the closing of the Series A preferred stock investment in the Company by General Catalyst (the “Closing”), on substantially the terms described herein, Company shall grant to Executive an additional option to purchase 1,687,808 shares of the common stock of the Company, par value $0.001 per share, which is the number of
shares required for the aggregate number of shares underlying all options held by Executive (including the Initial Option and the True-Up Option) to represent to an interest in the Company equal to 6.0% of the fully-diluted shares of the Company as of immediately following the Closing (the “True-Up Option,” and together with the Initial Option, the “Option”), with an exercise price to be determined by an independent third party valuation in accordance with the regulations promulgated under Section 409A of the of the Internal Revenue Code of 1986, as amended (“Code”). Executive shall vest in one-fourth (1/4th) of the True-Up Option on each of the first four (4) anniversaries of the Effective Date, in each case, provided Executive remains employed by Company from the date of grant until the applicable anniversary date. Notwithstanding anything in any Company stock incentive plan to the contrary, in the event of a Sale of the Company (as defined in Section 4.4.2), any unvested portion of the Option shall vest in full immediately prior to, and contingent upon, consummation of the Sale of the Company, provided Executive remains employed by Company at the time of the Sale of the Company. In addition, subject to Section 4.7, (a) if Executive’s employment and the Employment Period is terminated by Company without Cause, any unvested portion of the Option shall vest upon the Termination Date (defined below) and (b) if Executive’s employment and the Employment Period is terminated by Executive for Good Reason, then for purposes of calculating the vested portion of the Option as of the Termination Date (but for no other purpose), one (1) year shall be added to Executive’s Employment Period. Executive’s Option (whether or not vested at such time) shall be forfeited upon termination of Executive’s employment by Company for Cause. For the avoidance of doubt, no vested portion of the Option shall be forfeited in the event of Executive’s death, “disability” (as defined in Section 4.1.2), termination of employment without Cause or Executive’s voluntary termination of employment for any reason. The terms of the True-Up Option shall be set forth in a separate option agreement at the time of the grant. The grant of the True-Up Option will be subject to Executive’s delivery of the executed option agreement and certain other documents to be executed in connection therewith.

3.5.2 Equity-Based Awards. Executive also shall be eligible to participate in any applicable equity-based bonus, option or similar plan implemented by Company and generally available to its senior executive employees. The amount of any awards made thereunder shall be in the sole discretion of the Board or a committee of the Board.

4. Termination of the Services.

Executive’s employment hereunder and the Employment Period may be terminated at any time as follows (the effective date of such termination hereinafter referred to as the “Termination Date”).

4.1 Termination upon Death or Disability of Executive.

4.1.1 Executive’s employment hereunder and the Employment Period shall terminate immediately upon the death of Executive. In such event, all rights of Executive and/or Executive’s estate (or named beneficiary) shall cease except for the right to receive payment of the amounts set forth in Section 4.5.3 of the Agreement.

4.1.2 Company may terminate Executive’s employment hereunder and the Employment Period upon the disability of Executive. For purposes of this Agreement, Executive shall be deemed to be “disabled” if Executive suffers any physical or mental incapacity that renders him unable to engage in any substantial gainful activity by reason of any medically-determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, as determined by Company in good faith. In the event of a dispute as to whether Executive is disabled, Company may refer Executive to a licensed practicing physician who is mutually acceptable to Executive and Company, and Executive agrees to submit to such tests and examination as such physician shall deem appropriate to determine Executive’s capacity to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months. In such event, the parties hereby agree that the decision of such physician as to the disability of Executive shall be final and binding on the parties. Any termination of the Employment Period under this Section 4.1.2 shall be effected without any adverse effect on Executive’s rights to receive benefits under any disability policy of Company, but shall not be treated as a termination without Cause.
4.2 Termination by Company for Cause. Company may terminate Executive’s employment hereunder and the Employment Period for Cause (as defined herein) upon written notice to Executive, which termination shall be effective on the date specified by Company in such notice. For purposes of this Agreement, the term “Cause” shall mean:

4.2.1 the willful failure, disregard or refusal by Executive to perform his duties and obligations hereunder (other than any such failure resulting from the disability of Executive), which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by the Company;

4.2.2 Executive’s conviction (or entry of a nolo contendere plea) of a crime or offense (i) constituting a felony or involving fraud or moral turpitude or (ii) involving the property of Company that results in a material loss to Company; provided that, in the event that Executive is arrested or indicted for such a crime or offense, then Company may, at its option, place Executive on paid leave of absence, pending the final outcome of such arrest or indictment;

4.2.3 any act of fraud or embezzlement with respect to Company or its business relations, or Executive’s violation of any law, which act or violation in the reasonable judgment of the Board is materially and demonstrably injurious to the operations, financial condition or reputation of Company;

4.2.4 Executive’s material breach of any agreement with Company, which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by the Company; or

4.2.5 Executive’s willful failure or refusal to follow the Board’s reasonable and lawful instructions consistent with this Agreement, which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by the Company;

provided, however, that no act or failure to act on Executive’s part shall be considered “willful” unless it is done, or omitted to be done, by Executive in bad faith or without reasonable belief that his action or omission was in the best interests of the Company.

4.3 Termination without Cause; Termination by Executive without Good Reason. Executive may terminate his employment and the Employment Period at any time for any reason upon thirty (30) days’ prior written notice to Company. Company may terminate Executive’s employment and the Employment Period without Cause, upon thirty (30) days’ prior written notice to Executive. Upon termination of Executive’s employment with Company for any reason, Executive shall be deemed to have resigned from all positions with the other members of Company and its subsidiaries and the Board (provided that any such deemed resignations shall not affect Executive’s entitlement (if any) to severance pay and benefits hereunder).

4.4 Termination by Executive for Good Reason.

4.4.1 Executive may terminate Executive’s employment and the Employment Period, in accordance with the process set forth below for Good Reason. For purposes of this Agreement “Good Reason” shall mean the occurrence of any of the following after the Effective Date:

(i) a failure of Company to meet its obligations in any material respect under this Agreement, including, without limitation, (x) a reduction in the Base Salary or Target Performance Bonus percentage without Executive’s written consent or (y) any failure to pay the Base Salary or earned and owed Performance Bonus (other than, in the case of clause (y), the inadvertent failure to pay a de minimis amount of the Base Salary or earned and owed Performance Bonus, which payment is immediately made by Company upon notice from Executive); or

(ii) a material diminution in or other substantial adverse alteration in the nature or scope of Executive’s authority, duties and responsibilities with Company set forth in this Agreement or (y) change in the reporting lines of Executive such that Executive no longer reports to the Board; or
Executive has been asked to relocate his principal place of business to a location that is more than fifty (50) miles from Company’s offices located in Chicago, Illinois.

4.4.2 For purposes of this Agreement, a “Sale of the Company” shall have the meaning ascribed to such term in Section 3.1 of the Voting Agreement between the Company and certain stockholders of the Company and investors dated on or about the date of the Closing.

4.4.3 Upon the occurrence of an event constituting Good Reason, Executive shall have the right to terminate his employment hereunder and receive the benefits set forth in Section 4.5 below, upon delivery of written notice to Company no later than the close of business on the sixtieth (60th) day following the date of the first occurrence of the event or condition that would constitute Good Reason; provided, however, that such termination shall not be effective before the expiration of thirty (30) days after receipt by Company of such written notice (the “Cure Period”) if Company has not cured such Good Reason within the Cure Period. If Company so effects a cure, the Good Reason notice shall be deemed rescinded and of no force or effect. Executive must terminate employment as a result of a Good Reason no later than thirty (30) days after the lapse of the Cure Period, and the effective date of a Good Reason termination shall be the date of Executive’s “separation from service” (within the meaning of Treas. Reg. Section 1.409A-1(h)).

4.5 Rights upon Termination. Upon termination of Executive’s employment and the Employment Period, the following shall apply:

4.5.1 Termination by Company Without Cause or for Good Reason. If Company terminates Executive’s employment and the Employment Period without Cause, or if Executive terminates Executive’s employment and the Employment Period for Good Reason, in each case either (x) prior to a Sale of the Company (other than such a termination described in Section 4.5.2) or (y) after the first anniversary of a Sale of the Company, Executive shall be entitled to receive payment of the Accrued Amounts in lump sum form no later than ten (10) days after the Termination Date. The term “Accrued Amounts” means (A) any Base Salary amounts that have accrued but have not been paid as of the Termination Date, (B) any earned and declared but unpaid Performance Bonus with respect to the Fiscal Year preceding the Fiscal Year in which the Termination Date occurs and (C) any accrued but unused vacation, reimbursement for any expense reimbursable under this Agreement, and any vested benefits payable to Executive hereunder accrued through the Termination Date. In addition, subject to Section 4.7 below, Company shall, subject to Section 7.14, be obligated to pay Executive (or provide Executive with) the following benefits as severance:

(i) an amount equal to one-half (.5) times Executive’s Base Salary, payable in six (6) equal monthly installments commencing on the Termination Date, such amount to be payable regardless of whether Executive obtains other employment and is compensated therefor (but only so long as Executive is not in violation of Section 5 hereof) (with the first two installments to be paid on the sixtieth (60th) day following the Termination Date and the remaining four (4) installments being paid on the four (4) following monthly anniversaries of the Termination Date);

(ii) to the extent permitted by the terms of the plan, continuation of Executive’s then current enrollment (including family enrollment, if applicable) in all health and/or dental insurance benefits set forth in Section 3.3.2 for a period of six (6) months following the Termination Date, with Executive’s contribution to such plans as if Executive were employed by Company, such contributions to be paid by Executive in the same period (e.g., monthly, bi-weekly, etc.) as all other employees of Company; provided, that the Company may terminate such coverage if payment from Executive is not made within thirty (30) days of the date on which Executive receives written notice from Company that such payment is due; and provided, further, that if the terms of the plan do not permit continued participation or the provision of such benefits results in adverse tax consequences to the Company in connection with a change in applicable laws or regulations during such period, the Company and Executive agree that the Company shall reimburse the Executive, on a monthly basis, for the cost of continuing comparable coverage on an after-tax basis at the same percentage level as in effect immediate prior to the Termination Date, and provided, further, that such benefits may be discontinued earlier to the extent that Executive becomes entitled to comparable benefits from a subsequent employer; in addition, to the extent applicable, this benefit is contingent upon timely election of COBRA continuation coverage and will run concurrent with the COBRA period; and
4.5.2 Severance Upon Termination following a Sale of the Company. If, within the period beginning on the date of a Sale of the Company through the first anniversary of the Sale of the Company, Executive terminates Executive’s employment and the Employment Period as a result of a Good Reason or Company terminates Executive’s employment and the Employment Period without Cause, then Executive shall, subject to Section 4.7, receive the payment and benefits provided in Section 4.5.1; provided, however, that in place of the six (6) monthly payments provided for in Section 4.5.1(i), Executive shall receive a lump sum amount of cash equal to one and one-half times (1.5) times the sum of (x) Executive’s Base Salary plus (y) Executive’s Target Performance Bonus, with such lump sum paid on the sixtieth (60th) day following the Termination Date.

If the Sale of the Company does not constitute a change in the ownership or effective control of Company, or in the ownership of a substantial portion of the assets of Company, within the meaning of Section 409A of the Code, then the amount set forth in the immediately preceding paragraph that is to be paid in a lump sum on the sixtieth (60th) day following the Termination Date shall be paid instead in eighteen (18) equal monthly installments commencing on the Termination Date (with the first two installments to be paid on the sixtieth (60th) day following the Termination Date and the remaining sixteen (16) installments being paid on the sixtieth (60th) following monthly anniversaries of the Termination Date).

Anything in this Agreement to the contrary notwithstanding, if (A) a Sale of the Company occurs, (B) Executive’s employment with Company is terminated by Company without Cause or if Executive terminates his employment as a result of a Good Reason, in either case on or after commencement of a transaction that, if consummated, would constitute a Sale of the Company and prior to the date on which the Sale of the Company occurs, and (C) it is reasonably demonstrated by Executive that such termination of employment or events constituting Good Reason was (x) at the request of a third party who had taken steps reasonably calculated to effect a Sale of the Company or (y) otherwise arose in connection with or in anticipation of a Sale of the Company, then for all purposes of this Agreement such Sale of the Company shall be deemed to have occurred during the Term of Employment and the Termination Date shall be deemed to have occurred after the Sale of the Company, so that Executive is entitled to the payments and other benefits provided by this Section 4.5.2 payable as if the Sale of the Company did not constitute a change in ownership or effective control of the Company, or in the ownership of a substantial portion of the assets of Company, within the meaning of Section 409A of the Code.

4.5.3 Termination With Cause by Company or Without Good Reason by Executive. If Company terminates Executive’s employment and the Employment Period with Cause, or if Executive terminates Executive’s employment and the Employment Period other than as a result of a Good Reason, Company shall, subject to Section 7.14, be obligated to pay Executive the Accrued Amounts in lump sum form no later than ten (10) days after the Termination Date.

4.5.4 Termination Upon Death or Disability. If Executive’s employment and the Employment Period are terminated because of the death or disability of Executive, Company shall, subject to Section 7.14, be obligated to pay Executive or, if applicable, Executive’s estate, the Accrued Amounts in lump sum form no later than ten (10) days after the Termination Date.

4.6 Effect of Notice of Termination. Any notice of termination by Company, whether for Cause or without Cause, may specify that, during the notice period, Executive need not attend to any business on behalf of Company.

4.7 Requirement of a Release; Exclusivity of Severance Payments under this Agreement. As a condition to the receipt of the severance payments to be provided to Executive pursuant to Section 4.5.1 and 4.2.5 upon termination of Executive’s employment, Executive shall (i) execute and deliver to Company a general release of employment claims against Company and its affiliates in a form reasonably satisfactory to Company (the “Release”) within forty-five (45) days following the Termination Date (provided that Executive shall not be required to release any rights to severance payments and termination benefits under Section 4 of this Agreement or any indemnification or related rights under Company’s certificate of incorporation or Bylaws or under any indemnification agreement between Company and Executive (including the Indemnification Agreement) or any rights under any director and officer liability insurance policy maintained by Company for the benefit of
Executive) and (ii) continue to comply with the restrictive covenants set forth in the Employee Proprietary Information, Inventions Assignment, Non-Competition and Non-Solicitation Agreement attached hereto as Exhibit A (the “Restrictive Covenant Agreement”). In the event Executive breaches any provision of the Restrictive Covenant Agreement, all severance payments and termination benefits under this Section 4 shall cease immediately and Executive shall forfeit his right to any future severance payments. In addition, the severance payments and termination benefits to be provided to Executive pursuant to this Section 4 upon termination of Executive’s employment shall constitute the exclusive payments in the nature of severance or termination pay or salary continuation which shall be due to Executive upon a termination of employment and shall be in lieu of any other such payments under any severance plan, program, policy or other arrangement which has heretofore been or shall hereafter be established by Company or any of its affiliates, other than payments to Executive related to any future retention or incentive plan, or under any indemnification or related rights under Company’s certificate of incorporation or Bylaws or under any indemnification agreement between Company and Executive or under any director and officer liability insurance policy maintained by Company for the benefit of Executive.

5. Proprietary Information, Inventions Assignment, Non-Competition and Non-Solicitation Agreement.

Executive expressly acknowledges and agrees that, as a condition to Executive’s employment with Company pursuant to this Agreement, Executive shall execute the Employee Proprietary Information, Inventions Assignment, Non-Competition and Non-Solicitation Agreement attached hereto as Exhibit A and comply with the provisions thereof.

6. No Set-Off or Mitigation.

Company’s obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which Company may have against Executive or others. In no event shall Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Executive under any of the provisions of this Agreement and, except as otherwise provided herein, such amounts shall not be reduced whether or not Executive obtains other employment.

7. Miscellaneous.

7.1 Valid Obligation. This Agreement has been duly authorized, executed and delivered by Company and has been duly executed and delivered by Executive and is a legal, valid and binding obligation of Company and of Executive, enforceable in accordance with its terms.

7.2 No Conflicts. Executive represents and warrants that the performance by him of his duties hereunder will not violate, conflict with, or result in a breach of any provision of, any agreement to which he is a party.

7.3 Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Illinois, without reference to Illinois’ choice of law statutes or decisions.

7.4 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity or enforceability of any other provision. In the event any clause of this Agreement is deemed to be invalid, the parties shall endeavor to modify that clause in a manner which carries out the intent of the parties in executing this Agreement.

7.5 No Waiver. The waiver of a breach of any provision of this Agreement by any party shall not be deemed or held to be a continuing waiver of such breach or a waiver of any subsequent breach of any provision of this Agreement or as nullifying the effectiveness of such provision, unless agreed to in writing by the parties.
7.6 Notices. All demands, notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by facsimile machine (with a confirmation copy sent by one of the other methods authorized in this Section), or by commercial overnight delivery service, to the parties at the addresses set forth below:

To Company:  EosHealth, Inc.
c/o 7Wire Ventures
444 N. Michigan Avenue
10th Floor Chicago IL 60611
Telephone: 773.408.9745
Attention: Company Secretary or General Counsel

To Executive:  At the address or fax number most recently contained in
Company’s records

Notices shall be deemed given upon the earliest to occur of (i) receipt by the party to whom such notice is directed, if hand delivered; (ii) if sent by facsimile machine, on the day (other than a Saturday, Sunday or legal holiday in the jurisdiction to which such notice is directed) such notice is sent if sent (as evidenced by the facsimile confirmed receipt) prior to 5:00 p.m. Central Time and, if sent after 5:00 p.m. Central Time, on the day (other than a Saturday, Sunday or legal holiday in the jurisdiction to which such notice is directed) after which such notice is sent; or (iii) on the first business day (other than a Saturday, Sunday or legal holiday in the jurisdiction to which such notice is directed) following the day the same is deposited with the commercial carrier if sent by commercial overnight delivery service. Each party, by notice duly given in accordance therewith may specify a different address for the giving of any notice hereunder.

7.7 Assignment of Agreement. This Agreement shall be binding upon and inure to the benefit of Executive and Company, their respective successors and permitted assigns and Executive’s heirs and personal representatives. Neither party may assign any rights or obligations hereunder to any person or entity without the prior written consent of the other party. This Agreement shall be personal to Executive for all purposes.

7.8 Entire Agreement; Amendments. Except as otherwise provided herein, this Agreement contains the entire understanding between the parties, and there are no other agreements or understandings between the parties with respect to Executive’s employment by Company and his obligations thereto other than Executive’s indemnification or related rights under Company’s certificate of incorporation or Bylaws or under any indemnification agreement between Company and Executive (including the Indemnification Agreement) and Executive’s rights under any equity incentive plans or bonus plans of Company. Executive acknowledges that he is not relying upon any representations or warranties concerning his employment by Company except as expressly set forth herein. No amendment or modification to the Agreement shall be valid except by a subsequent written instrument executed by the parties hereto.

7.9 Dispute Resolution and Arbitration. The following procedures shall be used in the resolution of disputes:

7.9.1 Dispute. In the event of any dispute or disagreement between the parties under this Agreement, the disputing party shall provide written notice to the other party that such dispute exists. The parties will then make a good faith effort to resolve the dispute or disagreement. If the dispute is not resolved upon the expiration of fifteen (15) days from the date a party receives such notice of dispute, the entire matter shall then be submitted to arbitration as set forth in Section 7.9.2.

7.9.2 Arbitration. If the dispute or disagreement between the parties has not been resolved in accordance with the provisions of Section 7.9.1 above, then, except for disputes relating to the Restrictive Covenant Agreement described in Section 5, any such controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration to be held in Chicago, Illinois, in accordance with the rules of the American Arbitration Association then in effect. Any decision rendered herein shall be final and binding on each of the parties and judgment may be entered thereon in the appropriate state or federal court. The arbitrators shall be bound to strict interpretation and observation of the terms of this Agreement. Each party shall pay its own costs of arbitration.
Survival. For avoidance of doubt, the provisions of Sections 4.5, 4.7, 5, 6 and 7 of this Agreement shall survive the expiration or earlier termination of the Employment Period.

Headings. Section headings used in this Agreement are for convenience of reference only and shall not be used to construe the meaning of any provision of this Agreement.

Countercparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

Taxes. Executive shall be solely responsible for taxes imposed on Executive by reason of any compensation and benefits provided under this Agreement and all such compensation and benefits shall be subject to applicable withholding.

Section 409A of the Code. It is intended that this Agreement will comply with Section 409A of the Code (and any regulations and guidelines issued thereunder) to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such Intent. If an amendment of the Agreement is necessary in order for it to comply with Section 409A, the parties hereto will negotiate in good faith to amend the Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible. No action or failure by the Company in good faith to act, pursuant to this Section 7.14, shall subject the Company to any claim, liability, or expense, and the Company shall not have any obligation to indemnify or otherwise protect the Executive from the obligation to pay any taxes pursuant to Section 409A.

In addition, notwithstanding any provision to the contrary in this Agreement, if Executive is deemed on the date of his “separation from service” (within the meaning of Treas. Reg. Section 1.409A-1(h)) to be a “specified employee” (within the meaning of Treas. Reg. Section 1.409A-1(i)), then with respect to any payment that is required to be delayed pursuant to Section 409A(a)(2)(B) of the Code (the “Delayed Payments”), such payment shall not be made prior to the earlier of (i) the expiration of the six (6) month period measured from the date of her “separation from service” and (ii) the date of her death. Any payments due under this Agreement other than the Delayed Payments shall be paid in accordance with the normal payment dates specified herein. In no case will the delay of any of the Delayed Payments by Company constitute a breach of Company’s obligations under this Agreement. For the provision of payments and benefits under this Agreement upon termination of employment, reference to Executive’s “termination of employment” (and corollary terms) with Company shall be construed to refer to Executive’s “separation from service” from Company (as determined under Treas. Reg. Section 1.409A-1(h) with the work threshold of less than fifty percent (50%) of the prior level of services, as uniformly applied by Company) in tandem with Executive’s termination of employment with Company. For purposes of this Agreement, all rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Section 409A of the Code.

In addition, to the extent that any reimbursement or in-kind benefit under this Agreement or under any other reimbursement or in-kind benefit plan or arrangement in which Executive participates during the term of Executive’s employment under this Agreement or thereafter provides for a “deferral of compensation” within the meaning of Section 409A of the Code, (i) the amount eligible for reimbursement or in-kind benefit in one calendar year may not affect the amount eligible for reimbursement or in-kind benefit in any other calendar year (except that a plan providing medical or health benefits may impose a generally applicable limit on the amount that may be reimbursed or paid), (ii) the right to reimbursement or an in-kind benefit is not subject to liquidation or exchange for another benefit, and (iii) subject to any shorter time periods provided herein, any such reimbursement of an expense or in-kind benefit must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred.

If the sixty (60)-day period following a “separation from service” begins in one calendar year and ends in a second calendar year (a “Crossover 60-Day Period”), then any severance payments contingent upon a release and that would otherwise occur during the portion of the Crossover 60-Day Period that falls within the first year will be delayed and paid in a lump sum during the portion of the Crossover 60-Day Period that falls within the second year.
7.15 **280G Excise Tax.** If a payment or transfer by the Company to or for the benefit of Executive (a “Payment”) that is subject to taxation under Code Section 4999 or ineligible for deduction by the Company as an “excess parachute payment” as defined in Code Section 280G is triggered by a Sale of the Company, if so agreed by Company and Executive, the Payment may be presented to the Company’s shareholders for a vote, with full disclosure of all material facts about the Payment. If the Payment is approved by the vote of shareholders who owned (before the Sale of the Company) more than 75 percent (75%) of the voting power of all of the Company’s outstanding stock and the disclosure and other procedures are otherwise in compliance with Code Section 280G(b)(5) and other applicable Department of Treasury regulations promulgated under IRC Section 280G, then the Payment may proceed under the exemption set forth in Code Section 280G(b)(5).

[Signatures continued on next page]
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written, to be effective at the Effective Date.

EXECUTIVE

/s/ Glen E. Tullman
Glen E. Tullman

EOSHEALTH, INC.

By: /s/ Joseph E. Carey
Name: Joseph E. Carey
Title: Chief Operating Officer
THIS EMPLOYMENT AGREEMENT (this “Agreement”) is made as of September 1, 2015 (the “Effective Date”), by and between Livongo Health, Inc., a Delaware corporation (“Company”), and Jennifer Schneider, an individual resident in the State of California (“Executive”).

RECITALS

WHEREAS, Company desires to employ Executive as the Chief Medical Officer of Company as of the Effective Date, subject to the terms and conditions of this Agreement;

WHEREAS, Executive desires to be employed by Company in the aforesaid capacity, subject to the terms and conditions of this Agreement;

WHEREAS, the Company and the Executive have entered into, or intend to enter into, a Stock Option Agreement in substantially the form attached hereto as Exhibit A (the “Stock Option Agreement”).

NOW, THEREFORE, in consideration of the foregoing premises, of the mutual agreements and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows, effective as of the Effective Date:

AGREEMENT

1. Employment

Company hereby agrees to employ Executive, and Executive hereby accepts employment, as Chief Medical Officer of Company, pursuant to the terms of this Agreement. Executive shall have the duties and responsibilities and perform such administrative and managerial services customary to the position of Chief Medical Officer or as are set forth in the bylaws of Company (the “Bylaws”) or as shall be reasonably delegated or assigned to Executive by the Chief Executive Officer of Company from time to time. Executive shall report directly to the Chief Executive Officer. Executive shall devote a substantial portion of her business time to her responsibilities hereunder; provided that Executive shall be entitled to devote time to outside boards of directors, outside business activities, personal investments, civic and charitable activities, and personal education and development so long as such activities do not create a conflict with Executive’s employment hereunder or materially interfere with the performance of Executive’s duties. Executive will be based at the Company’s offices located in Mountain View, California, however the parties acknowledge that she may work from her home office for a material portion of the week.
2. Effective Date and Term.

The parties acknowledge that Executive’s employment relationship with the Company is at-will. Either Executive or the Company may terminate the employment relationship at any time, with or without Cause. The provisions in Section 4.5 govern the amount of compensation, if any, to be provided to Executive upon termination of employment and do not alter this at-will status. The period from the commencement of Executive’s employment by the Company on the Effective Date until the time that the Executive’s employment relationship is terminated by either Executive or the Company is referred to herein as the “Employment Period”.

3. Compensation and Benefits.

In consideration for the services Executive shall render under this Agreement, Company shall provide or cause to be provided to Executive the following compensation and benefits:

3.1 Base Salary. During the Employment Period, Company shall pay to Executive an annual base salary at a rate of $275,000 per annum, subject to all required federal and state withholding taxes, which base salary shall be payable in accordance with Company’s normal payroll practices and procedures (but no less frequently than monthly). Executive’s base salary shall be reviewed annually prior to the beginning of each fiscal year of Company during the Employment Period by the Chief Executive Officer, and may be increased based on Executive’s performance during the preceding Fiscal Year. For purposes of this Agreement, the term “Fiscal Year” shall mean the fiscal year of Company. Executive’s base salary, as such base salary may be increased hereunder, is hereinafter referred to as the “Base Salary.”

3.2 Performance Bonus. During each Fiscal Year during the Employment Period, Executive shall be eligible to receive cash bonuses in accordance with this Section 3.2 (each a “Performance Bonus”). Payment of any Performance Bonus will be determined by the CEO of the Company, based upon criteria selected by the CEO of the Company, subject to the sole discretion of the Board of Directors of the Company (the “Board”) or a committee of the Board. Executive’s target Performance Bonus shall be fifty percent (50%) of her Base Salary (the “Target Performance Bonus”). No portion of the Performance Bonus is guaranteed, however, if awarded, the Performance Bonus shall be paid at the same time as similar bonuses are paid to other senior executives.

3.3 Benefits. During the Employment Period and as otherwise provided hereunder, Executive shall be entitled to the following:

3.3.1 Vacation. Executive shall be entitled to three (3) weeks per Fiscal Year of vacation, such vacation not to be cumulative (i.e., vacation not taken in any Fiscal Year shall not be carried forward and used in any subsequent Fiscal Year).

3.3.2 Participation in Benefit Plans. Executive shall be entitled to health and/or dental benefits, including immediate coverage for Executive and her eligible dependents, which are generally available to Company’s senior executive employees and as provided by Company in accordance with its group health insurance plan coverage. In addition, Executive shall be entitled to participate in any profit sharing plan, retirement plan, group life insurance plan or other insurance plan or medical expense plan maintained by Company for its senior executives generally, in accordance with the general eligibility criteria therein.

3.3.3 Perquisites. Executive shall be entitled to such other benefits and perquisites that are generally available to Company’s senior executive employees and as provided in accordance with Company’s plans, practices, policies and programs for senior executive employees of Company. Executive will be provided, at the Company’s expense, transportation to and from the Mountain View office to her home on days she travels to the office.
3.3.4 **Indemnification.** To the fullest extent permissible under applicable law, Executive shall be entitled to indemnification (including immediate advancement of all legal fees with respect to any claim for indemnification) and director and officers’ insurance coverage, to the extent made available to other directors and senior executives, in accordance with the certificate of incorporation or Bylaws and all other applicable policies and procedures of Company for expenses incurred or damages paid or payable by Executive with respect to a claim against Executive based on actions or inactions by Executive in her capacity as a senior executive or director of Company.

3.4 **Expenses.** Company shall reimburse Executive for proper and necessary expenses incurred by Executive in the performance of her duties under this Agreement from time to time upon Executive’s submission to Company of invoices of such expenses in reasonable detail and subject to all standard policies and procedures of Company with respect to such expenses.

3.5 **Equity Interests.** Executive shall be entitled to the following:

3.5.1 **Option Grant.** Company has heretofore granted, or within thirty (30) days following the Effective Date will grant, to Executive, the option to purchase shares of the common stock, par value $0.001 per share, of the Company, as set forth in the Stock Option Agreement (the “Option”). The Option shall be issued at an exercise price equal to 100% of the fair market value of the Company common stock on the date of grant, which shall be determined by an independent third party valuation in accordance with the regulations promulgated under Section 409A of the Internal Revenue Code of 1986, as amended (“Code”).

3.5.2 **Equity-Based Awards.** Executive also shall be eligible to participate in any applicable equity-based bonus, option or similar plan implemented by Company and generally available to its senior executive employees. The amount of any awards made thereunder shall be in the sole discretion of the Board or a committee of the Board.

4. **Termination of the Services.**

Executive’s employment hereunder and the Employment Period may be terminated at any time as follows (the effective date of such termination hereinafter referred to as the “Termination Date”).

4.1 **Termination upon Death or Disability of Executive.**

4.1.1 Executive’s employment hereunder and the Employment Period shall terminate immediately upon the death of Executive. In such event, all rights of Executive and/or Executive’s estate (or named beneficiary) shall cease except for the right to receive payment of the amounts set forth in Section 4.5.3 of the Agreement.
4.1.2 Company may terminate Executive's employment hereunder and the Employment Period upon the disability of Executive. For purposes of this Agreement, Executive shall be deemed to be “disabled” if Executive suffers any physical or mental incapacity that renders her unable to engage in any substantial gainful activity by reason of any medically-determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, as determined by Company in good faith. In the event of a dispute as to whether Executive is disabled, Company may refer Executive to a licensed practicing physician who is mutually acceptable to Executive and Company, and Executive agrees to submit to such tests and examination as such physician shall deem appropriate to determine Executive's capacity to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months. In such event, the parties hereby agree that the decision of such physician as to the disability of Executive shall be final and binding on the parties. Any termination of the Employment Period under this Section 4.1.2 shall be effected without any adverse effect on Executive's rights to receive benefits under any disability policy of Company, but shall not be treated as a termination without Cause.

4.2 Termination by Company for Cause. Company may terminate Executive’s employment hereunder and the Employment Period for Cause (as defined herein) upon written notice to Executive, which termination shall be effective on the date specified by Company in such notice. For purposes of this Agreement, the term “Cause” shall mean:

4.2.1 the willful failure, disregard or refusal by Executive to perform her duties and obligations hereunder (other than any such failure resulting from the disability of Executive), which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by the Company;

4.2.2 Executive’s conviction (or entry of a nolo contendere plea) of a crime or offense (i) constituting a felony or involving fraud or moral turpitude or (ii) involving the property of Company that results in a material loss to Company; provided that, in the event that Executive is arrested or indicted for such a crime or offense, then Company may, at its option, place Executive on paid leave of absence, pending the final outcome of such arrest or indictment;

4.2.3 any act of fraud or embezzlement with respect to Company or its business relations, or Executive’s violation of any law, which act or violation in the reasonable judgment of the Chief Executive Officer is materially and demonstrably injurious to the operations or financial condition of Company;

4.2.4 Executive’s material breach of any agreement with Company, which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by the Company; or

4.2.5 Executive’s willful failure or refusal to follow the Chief Executive Officer’s reasonable and lawful instructions consistent with this Agreement, which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by the Company; provided, however, that no act or failure to act on Executive’s part shall be considered “willful” unless it is done, or omitted to be done, by Executive in bad faith or without reasonable belief that her action or omission was in the best interests of the Company.
4.3 **Termination without Cause; Termination by Executive without Good Reason.** Executive may terminate her employment and the Employment Period at any time for any reason upon thirty (30) days’ prior written notice to Company. Company may terminate Executive’s employment and the Employment Period without Cause, upon thirty (30) days’ prior written notice to Executive. Upon termination of Executive’s employment with Company for any reason, Executive shall be deemed to have resigned from all positions with the other members of Company and its subsidiaries and the Board (provided that any such deemed resignations shall not affect Executive’s entitlement (if any) to severance pay and benefits hereunder).

4.4 **Termination by Executive for Good Reason.**

4.4.1 Executive may terminate Executive’s employment and the Employment Period, in accordance with the process set forth below for Good Reason. For purposes of this Agreement “Good Reason” shall mean the occurrence of any of the following after the Effective Date:

(i) a failure of Company to meet its obligations in any material respect under this Agreement, including, without limitation, (x) a reduction in the Base Salary or Target Performance Bonus percentage without Executive’s written consent or (y) any failure to pay the Base Salary or earned and owed Performance Bonus (other than, in the case of clause (y), the inadvertent failure to pay a de minimis amount of the Base Salary or earned and owed Performance Bonus, which payment is immediately made by Company upon notice from Executive); or

(ii) a material diminution in or other substantial adverse alteration in the nature or scope of Executive’s authority, duties and responsibilities with Company set forth in this Agreement, including without limitation any requirement that Executive report to any person or entity other than the Chief Executive Officer; or

(iii) Executive has been asked to relocate her principal place of business to a location that is more than thirty (30) miles from Company’s offices located in Mountain View, California.

4.4.2 Upon the occurrence of an event constituting Good Reason, Executive shall have the right to terminate her employment hereunder and receive the benefits set forth in Section 4.5 below, upon delivery of written notice to Company no later than the close of business on the sixtieth (60th) day following the date of the first occurrence of the event or condition that would constitute Good Reason; provided, however, that such termination shall not be effective before the expiration of thirty (30) days after receipt by Company of such written notice (the “Cure Period”) if Company has not cured such Good Reason within the Cure Period. If Company so effects a cure, the Good Reason notice shall be deemed rescinded and of no force or effect. Executive must terminate employment as a result of a Good Reason no later than thirty (30) days after the lapse of the Cure Period, and the effective date of a Good Reason termination shall be the date of Executive’s “separation from service” (within the meaning of Treas. Reg. Section 1.409A-1(h)).
4.5 Rights upon Termination. Upon termination of Executive’s employment and the Employment Period, the following shall apply:

4.5.1 Termination by Company Without Cause or for Good Reason. If Company terminates Executive’s employment and the Employment Period without Cause, or if Executive terminates Executive’s employment and the Employment Period for Good Reason, Executive shall be entitled to receive payment of the Accrued Amounts in lump sum form no later than ten (10) days after the Termination Date. The term “Accrued Amounts” means (A) any Base Salary amounts that have accrued but have not been paid as of the Termination Date, (B) any earned and declared but unpaid Performance Bonus with respect to the Fiscal Year preceding the Fiscal Year in which the Termination Date occurs and (C) any accrued but unused vacation, reimbursement for any expense reimbursable under this Agreement, and any vested benefits (including vested rights in Company equity, subject to the terms of the Option Agreement) payable to Executive hereunder accrued through the Termination Date. In addition, subject to Section 4.7 below, Company shall, subject to Section 7.14, be obligated to pay Executive (or provide Executive with), as severance, an amount equal to one-half (0.5) of Executive’s Base Salary, payable in six (6) equal monthly installments commencing on the date the Release (as defined in Section 4.7) becomes irrevocable (but subject to Section 7.14), such amount to be payable regardless of whether Executive obtains other employment and is compensated therefor (but only so long as Executive is not in violation of Section 5 hereof).

4.5.2 Termination With Cause by Company or Without Good Reason by Executive. If Company terminates Executive’s employment and the Employment Period with Cause, or if Executive terminates Executive’s employment and the Employment Period other than as a result of a Good Reason, Company shall, subject to Section 7.14, be obligated to pay Executive the Accrued Amounts in lump sum form no later than ten (10) days after the Termination Date.

4.5.3 Termination Upon Death or Disability. If Executive’s employment and the Employment Period are terminated because of the death or disability of Executive, Company shall, subject to Section 7.14, be obligated to pay Executive or, if applicable, Executive’s estate, the Accrued Amounts in lump sum form no later than ten (10) days after the Termination Date.

4.6 Effect of Notice of Termination. Any notice of termination by Company, whether for Cause or without Cause, may specify that, during the notice period, Executive need not attend to any business on behalf of Company.

4.7 Requirement of a Release; Exclusivity of Severance Payments under this Agreement. As a condition to the receipt of the severance payments to be provided to Executive pursuant to Section 4.5.1 upon termination of Executive’s employment, Executive shall (i) execute and deliver to Company a general release of employment claims against Company and its affiliates in a form reasonably satisfactory to Company (the “Release”) within forty-five (45) days following the Termination Date (provided that Executive shall not be required to release any rights to severance payments and termination benefits under Section 4 of this
Agreement, any vested rights to compensation or benefits which Executive may have as of the Termination Date or any indemnification or related rights under Company’s certificate of incorporation or Bylaws or under any indemnification agreement between Company and Executive or any rights under any director and officer liability insurance policy maintained by Company for the benefit of Executive) and (ii) continue to comply with the restrictive covenants set forth in the Employee Proprietary Information, Inventions Assignment, Non-Competition and Non-Solicitation Agreement attached hereto as Exhibit B (the “Restrictive Covenant Agreement”). In the event Executive breaches any material provision of the Restrictive Covenant Agreement, all severance payments and termination benefits under this Section 4 shall cease immediately and Executive shall forfeit her right to any future severance payments. In addition, the severance payments and termination benefits to be provided to Executive pursuant to this Section 4 upon termination of Executive’s employment shall constitute the exclusive payments in the nature of severance or termination pay or salary continuation which shall be due to Executive upon a termination of employment and shall be in lieu of any other such payments under any severance plan, program, policy or other arrangement which has heretofore been or shall hereafter be established by Company or any of its affiliates, other than payments to Executive related to any future retention or incentive plan, or under any indemnification or related rights under Company’s certificate of incorporation or Bylaws or under any indemnification agreement between Company and Executive or under any director and officer liability insurance policy maintained by Company for the benefit of Executive.

5. Proprietary Information, Inventions Assignment, Non-Competition and Non-Solicitation Agreement.

Executive expressly acknowledges and agrees that, as a condition to Executive’s employment with Company pursuant to this Agreement, Executive shall execute the Employee Proprietary Information, Inventions Assignment, Non-Competition and Non-Solicitation Agreement attached hereto as Exhibit B and comply with the provisions thereof.

6. No Set-Off or Mitigation.

Company’s obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which Company may have against Executive or others. In no event shall Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Executive under any of the provisions of this Agreement and, except as otherwise provided herein, such amounts shall not be reduced whether or not Executive obtains other employment.

7. Miscellaneous.

7.1 Valid Obligation. This Agreement has been duly authorized, executed and delivered by Company and has been duly executed and delivered by Executive and is a legal, valid and binding obligation of Company and of Executive, enforceable in accordance with its terms.
7.2 **No Conflicts.** Executive represents and warrants that the performance by her of her duties hereunder will not violate, conflict with, or result in a breach of any provision of, any agreement to which she is a party.

7.3 **Applicable Law.** This Agreement shall be construed in accordance with the laws of the State of California, without reference to California’s choice of law statutes or decisions.

7.4 **Severability.** The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity or enforceability of any other provision. In the event any clause of this Agreement is deemed to be invalid, the parties shall endeavor to modify that clause in a manner which carries out the intent of the parties in executing this Agreement.

7.5 **No Waiver.** The waiver of a breach of any provision of this Agreement by any party shall not be deemed or held to be a continuing waiver of such breach or a waiver of any subsequent breach of any provision of this Agreement or as nullifying the effectiveness of such provision, unless agreed to in writing by the parties.

7.6 **Notices.** All demands, notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be personally delivered or by commercial overnight delivery service, to the parties at the addresses set forth below:

- **To Company:** Livongo Health, Inc.
  c/o 7Wire Ventures
  444 N. Michigan Avenue, Ste. 2880
  Chicago IL 60611
  Telephone: 773.408.9745
  Attention: Company Secretary or General Counsel

- **To Executive:** At the address most recently contained in Company’s records

Notices shall be deemed given upon the earliest to occur of (i) receipt by the party to whom such notice is directed, if hand delivered or (ii) on the first business day (other than a Saturday, Sunday or legal holiday in the jurisdiction to which such notice is directed) following the day the same is deposited with the commercial carrier if sent by commercial overnight delivery service. Each party, by notice duly given in accordance therewith may specify a different address for the giving of any notice hereunder.

7.7 **Assignment of Agreement.** This Agreement shall be binding upon and inure to the benefit of Executive and Company, their respective successors and permitted assigns and Executive’s heirs and personal representatives. Neither party may assign any rights or obligations hereunder to any person or entity without the prior written consent of the other party. This Agreement shall be personal to Executive for all purposes.
7.8 **Entire Agreement; Amendments.** Except as otherwise provided herein, this Agreement contains the entire understanding between the parties, and there are no other agreements or understandings between the parties with respect to Executive’s employment by Company and her obligations thereto other than Executive’s indemnification or related rights under Company’s certificate of incorporation or Bylaws or under any indemnification agreement between Company and Executive and Executive’s rights under any equity incentive plans or bonus plans of Company. Executive acknowledges that she is not relying upon any representations or warranties concerning her employment by Company except as expressly set forth herein. No amendment or modification to the Agreement shall be valid except by a subsequent written instrument that (i) explicitly states the intent of both parties hereto to supplement the terms herein and (ii) is signed by both parties hereto.

7.9 **Dispute Resolution and Arbitration.** The following procedures shall be used in the resolution of disputes:

7.9.1 **Dispute.** In the event of any dispute or disagreement between the parties under this Agreement, the disputing party shall provide written notice to the other party that such dispute exists. The parties will then make a good faith effort to resolve the dispute or disagreement. If the dispute is not resolved upon the expiration of fifteen (15) days from the date a party receives such notice of dispute, the entire matter shall then be submitted to arbitration as set forth in Section 7.9.2.

7.9.2 **Arbitration.** If the dispute or disagreement between the parties has not been resolved in accordance with the provisions of Section 7.9.1 above, then, except for disputes relating to the Restrictive Covenant Agreement described in Section 5, any such controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration to be held in Santa Clara County, California, in accordance with the rules of the American Arbitration Association then in effect. Any decision rendered herein shall be final and binding on each of the parties and judgment may be entered thereon in the appropriate state or federal court. The arbitrators shall be bound to strict interpretation and observation of the terms of this Agreement.

7.10 **Survival.** For avoidance of doubt, the provisions of Sections 4.5, 4.7, 5, 6 and 7 of this Agreement shall survive the expiration or earlier termination of the Employment Period.

7.11 **Headings.** Section headings used in this Agreement are for convenience of reference only and shall not be used to construe the meaning of any provision of this Agreement.

7.12 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

7.13 **Taxes.** Executive shall be solely responsible for taxes imposed on Executive by reason of any compensation and benefits provided under this Agreement and all such compensation and benefits shall be subject to applicable withholding.

7.14 **Section 409A of the Code.** It is intended that this Agreement will comply with Section 409A of the Code (and any regulations and guidelines issued thereunder) to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If an amendment of the Agreement is necessary in order for it to comply with
Section 409A, the parties hereto will negotiate in good faith to amend the Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible. No action or failure by the Company in good faith to act, pursuant to this Section 7.14, shall subject the Company to any claim, liability, or expense, and the Company shall not have any obligation to indemnify or otherwise protect the Executive from the obligation to pay any taxes pursuant to Section 409A.

In addition, notwithstanding any provision to the contrary in this Agreement, if Executive is deemed on the date of her “separation from service” (within the meaning of Treas. Reg. Section 1.409A-1(h)) to be a “specified employee” (within the meaning of Treas. Reg. Section 1.409A-1(i)), then with regard to any payment that is required to be delayed pursuant to Section 409A(a)(2)(B) of the Code (the “Delayed Payments”), such payment shall not be made prior to the earlier of (i) the expiration of the six (6) month period measured from the date of her “separation from service” and (ii) the date of her death. Any payments due under this Agreement other than the Delayed Payments shall be paid in accordance with the normal payment dates specified herein. In no case will the delay of any of the Delayed Payments by Company constitute a breach of Company’s obligations under this Agreement. For purposes of payments and benefits under this Agreement upon termination of employment, reference to Executive’s “termination of employment” (and corollary terms) with Company shall be construed to refer to Executive’s “separation from service” from Company (as determined under Treas. Reg. Section 1.409A-1(h) with the work threshold of less than fifty percent (50%) of the prior level of services, as uniformly applied by Company) in tandem with Executive’s termination of employment with Company. For purposes of this Agreement, all rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Section 409A of the Code.

In addition, to the extent that any reimbursement or in-kind benefit under this Agreement or under any other reimbursement or in-kind benefit plan or arrangement in which Executive participates during the term of Executive’s employment under this Agreement or thereafter provides for a “deferral of compensation” within the meaning of Section 409A of the Code, (i) the amount eligible for reimbursement or in-kind benefit in one calendar year may not affect the amount eligible for reimbursement or in-kind benefit in any other calendar year (except that a plan providing medical or health benefits may impose a generally applicable limit on the amount that may be reimbursed or paid), (ii) the right to reimbursement or an in-kind benefit is not subject to liquidation or exchange for another benefit, and (iii) subject to any shorter time periods provided herein, any such reimbursement of an expense or in-kind benefit must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred.

If the sixty (60)-day period following a “separation from service” begins in one calendar year and ends in a second calendar year (a “Crossover 60-Day Period”), then any severance payments contingent upon the Release and that would otherwise occur during the portion of the Crossover 60-Day Period that falls within the first year will be delayed and paid in a lump sum during the portion of the Crossover 60-Day Period that falls within the second year.

[Signatures continued on next page]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written, to be effective at the Effective Date.

EXECUTIVE

/s/ Jennifer Schneider
Jennifer Schneider

LIVONGO HEALTH, INC.

By:  
/s/ Sarah O’ Brien
Name:  Sarah O’ Brien
EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this “Agreement”) is made as of January 18, 2019 (the “Effective Date”), by and between Livongo Health, Inc., a Delaware corporation ("Company”), and Lee Shapiro, an individual resident in the State of Illinois (“Executive”).

RECITALS

WHEREAS, Company desires to employ Executive as the Chief Financial Officer of Company as of the Effective Date, subject to the terms and conditions of this Agreement;

WHEREAS, Executive desires to be employed by Company in the aforesaid capacity, subject to the terms and conditions of this Agreement; and

WHEREAS, Company and Executive have entered into, or intend to enter into, Restricted Stock Unit Agreements in substantially the form attached hereto as Exhibit A, Exhibit B, and Exhibit C (the “RSU Agreements”).

NOW, THEREFORE, in consideration of the foregoing premises, of the mutual agreements and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows, effective as of the Effective Date:

AGREEMENT

1. Employment

Effective as of the Effective Date, Company hereby agrees to employ Executive, and Executive hereby accepts employment, as Chief Financial Officer of Company, pursuant to the terms of this Agreement. Executive shall have the duties and responsibilities and perform such administrative and managerial services customary to the position of Chief Financial Officer and as are set forth in the bylaws of Company (the “Bylaws”) or shall be reasonably delegated or assigned to Executive by the Chief Executive Officer of Company (the “CEO”) and Board of the Directors of Company (the “Board”) from time to time. Executive shall report directly to the CEO. Executive shall devote a substantial portion of his business time to his responsibilities hereunder; provided that Executive shall be entitled to devote time to outside boards of directors, outside business activities, personal investments, civic and charitable activities, and personal education and development so long as such activities do not create a conflict with Executive’s employment hereunder or materially interfere with the performance of Executive’s duties. For the avoidance of doubt, Company hereby acknowledges and agrees that Executive’s business-related activities for and on behalf of 7wire Ventures and its affiliates will not result in a violation of the preceding sentence. For the avoidance of doubt, except for periods of required travel, Executive will primarily perform his duties hereunder in the Company’s offices in Chicago, Illinois.
2. Effective Date and Term.

The parties acknowledge that Executive’s employment relationship with Company is at-will. Either Executive or Company may terminate the employment relationship at any time, with or without Cause. The provisions in Section 4.5 govern the amount of compensation, if any, to be provided to Executive upon termination of employment and do not alter this at-will status. The period from the commencement of Executive’s employment by Company on the Effective Date until the time that Executive’s employment relationship is terminated by either Executive or Company is referred to herein as the “Employment Period”.

3. Compensation and Benefits.

In consideration for the services Executive shall render under this Agreement, Company shall provide or cause to be provided to Executive the following compensation and benefits:

3.1 Base Salary. During the Employment Period, Company shall pay to Executive an annual base salary at a rate of $340,000 per annum, subject to all required federal and state withholding taxes, which base salary shall be payable in accordance with Company’s normal payroll practices and procedures (but no less frequently than monthly). Executive’s base salary shall be reviewed annually prior to the beginning of each fiscal year of Company during the Employment Period by the CEO, and may be increased in the sole discretion of the CEO, based on Executive’s performance during the preceding Fiscal Year. For purposes of this Agreement, the term “Fiscal Year” shall mean the fiscal year of Company. Executive’s base salary, as such base salary may be increased hereunder, is hereinafter referred to as the “Base Salary.”

3.2 Performance Bonus. During each Fiscal Year during the Employment Period, Executive shall be eligible to receive cash bonuses in accordance with this Section 3.2 (each a “Performance Bonus”). Payment of any Performance Bonus will be subject to the sole discretion of the Board, or a committee of the Board, and the amount of any such Performance Bonus will be determined by, and based upon criteria selected by, the Board or such committee. Executive’s target Performance Bonus shall be fifty percent (50%) of his Base Salary (the “Target Performance Bonus”). No portion of the Performance Bonus is guaranteed; however, if awarded by the Board or a committee of the Board, the Performance Bonus shall be paid at the same time as similar bonuses are paid to other senior executives.

3.3 Benefits. During the Employment Period and as otherwise provided hereunder, Executive shall be entitled to the following:

3.3.1 Participation in Benefit Plans. Executive shall be entitled to health and/or dental benefits, including immediate coverage for Executive and his eligible dependents, which are generally available to Company’s senior executive employees and as provided by Company in accordance with its group health insurance plan coverage. In addition, Executive shall be entitled to participate in any profit sharing plan, retirement plan, group life insurance plan or other insurance plan or medical expense plan maintained by Company for its senior executives generally, in accordance with the general eligibility criteria therein.

3.3.2 Perquisites. Executive shall be entitled to such other benefits and perquisites that are generally available to Company’s senior executive employees and as provided in accordance with Company’s plans, practices, policies and programs for senior executive employees of Company.
3.3.3 Mountain View Housing Reimbursement. During the Employment Period, Executive shall be entitled to receive a housing reimbursement of up to $4,800.00 per month, including utility expenses, for purposes of obtaining a rental apartment in Mountain View, California. Such reimbursement shall be payable no later than the end of the next succeeding calendar month after the month to which the payment relates. Except for required withholding, Executive will be responsible for any taxes due on such reimbursement. The Executive shall provide appropriate documentation regarding these expenses as the Company may reasonably request.

3.3.4 Indemnification. To the fullest extent permissible under applicable law, Executive shall be entitled to indemnification (including immediate advancement of all legal fees with respect to any claim for indemnification) and director and officers’ insurance coverage, to the extent made available to other directors and senior executives, in accordance with the certificate of incorporation or the Bylaws and all other applicable policies and procedures of Company for expenses incurred or damages paid or payable by Executive with respect to a claim against Executive based on actions or inactions by Executive in his capacity as a senior executive or director of Company.

3.4 Expenses. Company shall reimburse Executive for proper and necessary expenses incurred by Executive in the performance of his duties under this Agreement from time to time upon Executive’s submission to Company of invoices of such expenses in reasonable detail and subject to all standard policies and procedures of Company with respect to such expenses.

3.5 Equity-Based Awards.

3.5.1 RSU Grants. Pursuant to the prior written approval of the Compensation Committee of Company’s Board of Directors, as of the Effective Date, the Executive shall be granted (a) a Restricted Stock Unit award of 982,302 shares of Livongo Common Stock (the “RSU Award #1”) as set forth in the RSU Agreement evidencing such award which is attached hereto as Exhibit A (the “RSU #1 Agreement”), (b) a Restricted Stock Unit award of 1,964,603 shares of Livongo Common Stock (the “RSU Award #2”), as set forth in the RSU Agreement evidencing such award which is attached hereto as Exhibit B (the “RSU #2 Agreement”), and (c) a Restricted Stock Unit award of 322,500 shares of Livongo Common Stock (the “RSU Award #3”), as set forth in the RSU Agreement evidencing such award which is attached hereto as Exhibit C (the “RSU #3 Agreement,” and together with the RSU #1 Agreement and the RSU #2 Agreement, the “RSU Agreements”). The RSU Award #1, the RSU Award #2 and the RSU Award #3 shall be collectively referred to as the “RSU Awards”. The RSU Awards will be subject to the terms and conditions of Livongo Health, Inc. 2014 Stock Incentive Plan, as well as the vesting schedule and other terms and conditions of the respective RSU Agreements.

3.5.2 RSU Acceleration. Subject to Section 4.7, if Executive’s employment and the Employment Period is terminated by Company without Cause or by Executive for Good Reason, then for purposes of calculating the vested portion of the RSU Award #3 as of the Termination Date (but for no other purpose), the Time and Service Based Requirement (as defined in the applicable RSU Agreement) will be satisfied as to one hundred percent (100%) of RSU Award #3. Executive’s RSU Awards (whether or not otherwise vested at such time) shall be forfeited upon termination of Executive’s employment by Company for Cause.
3.5.3 Continued Vesting. In the event that, in connection with the termination of his employment hereunder, Executive is available to continue to provide consulting services to Company, then the RSU Award #3 shall continue to become vested as set forth in the RSU #3 Agreement as if Executive’s employment has not otherwise terminated.

3.5.4 Other Awards. Executive shall also be eligible to participate in any applicable equity-based bonus, option or similar plan implemented by Company and generally available to its senior executive employees. The amount of any awards made thereunder shall be in the sole discretion of the Board or a committee of the Board.

3.6 Attorney’s Fees. The Company hereby agrees to pay up to $10,000 of the attorney fees incurred by Executive in connection with the negotiation and execution of this Agreement, the RSU Agreements and the documents that are ancillary to any of the foregoing.

4. Termination of the Services.

Executive’s employment hereunder and the Employment Period may be terminated at any time as follows (the effective date of such termination hereinafter referred to as the “Termination Date”).

4.1 Termination upon Death or Disability of Executive.

4.1.1 Executive’s employment hereunder and the Employment Period shall terminate immediately upon the death of Executive. In such event, all rights of Executive and/or Executive’s estate (or named beneficiary) shall cease except for the right to receive payment of the amounts set forth in Section 4.5.3 of the Agreement.

4.1.2 Company may terminate Executive’s employment hereunder and the Employment Period upon the disability of Executive. For purposes of this Agreement, Executive shall be deemed to be “disabled” if Executive suffers any physical or mental incapacity that renders him unable to engage in any substantial gainful activity by reason of any medically-determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, as determined by Company in good faith. In the event of a dispute as to whether Executive is disabled, Company may refer Executive to a licensed practicing physician who is mutually acceptable to Executive and Company, and Executive agrees to submit to such tests and examination as such physician shall deem appropriate to determine Executive’s capacity to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months. In such event, the parties hereby agree that the decision of such physician as to the disability of Executive shall be final and binding on the parties. Any termination of the Employment Period under this Section 4.1.2 shall be effected without any adverse effect on Executive’s rights to receive benefits under any disability policy of Company, but shall not be treated as a termination without Cause.

4.2 Termination by Company for Cause. Company may terminate Executive’s employment hereunder and the Employment Period for Cause (as defined herein) upon written notice to Executive, which termination shall be effective on the date specified by Company in such notice. For purposes of this Agreement, the term “Cause” shall mean:
4.2.1 the willful failure, disregard or refusal by Executive to perform his duties and obligations hereunder (other than any such failure resulting from the disability of Executive), which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by Company;

4.2.2 Executive’s conviction (or entry of a nolo contendere plea) of a crime or offense (i) constituting a felony or involving fraud or moral turpitude or (ii) involving the property of Company that results in a material loss to Company; provided that, in the event that Executive is arrested or indicted for such a crime or offense, then Company may, at its option, place Executive on paid leave of absence, pending the final outcome of such arrest or indictment;

4.2.3 any act of fraud or embezzlement with respect to Company or its business relations, or Executive’s violation of any law, which act or violation in the reasonable judgment of the Board is materially and demonstrably injurious to the operations or financial condition of Company;

4.2.4 Executive’s material breach of any agreement with Company, which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by Company; or

4.2.5 Executive’s willful failure or refusal to follow the CEO’s and/or Board’s reasonable and lawful instructions consistent with this Agreement, which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by Company;

provided, however, that no act or failure to act on Executive’s part shall be considered “willful” unless it is done, or omitted to be done, by Executive in bad faith or without reasonable belief that his action or omission was in the best interests of Company.

4.3 Termination without Cause; Termination by Executive without Good Reason. Executive may terminate his employment and the Employment Period at any time for any reason upon thirty (30) days’ prior written notice to Company. Company may terminate Executive’s employment and the Employment Period without Cause, upon written notice to Executive. Upon termination of Executive’s employment with Company for any reason, Executive shall be deemed to have resigned from all positions with Company and its subsidiaries (provided that any such deemed resignations shall not affect Executive’s entitlement (if any) to severance pay and benefits hereunder).

4.4 Termination by Executive for Good Reason.

4.4.1 Executive may terminate Executive’s employment and the Employment Period, in accordance with the process set forth below for Good Reason. For purposes of this Agreement “Good Reason” shall mean the occurrence of any of the following after the Effective Date:

(i) a failure of Company to meet its obligations in any material respect under this Agreement, including, without limitation, (x) a reduction in the Base Salary or Target Performance Bonus percentage without Executive’s written consent or (y) any failure to pay the Base Salary or earned and owed Performance Bonus (other than, in the case of clause (y), the inadvertent failure to pay a de minimis amount of the Base Salary or earned and owed Performance Bonus, which payment is immediately made by Company upon notice from Executive);
(ii) a material diminution in or other substantial adverse alteration in the nature or scope of Executive’s authority, duties and responsibilities with Company set forth in this Agreement, including without limitation any requirement that Executive report to any person or entity other than CEO or Board;

(iii) Company requires Executive to relocate outside of the Chicago, Illinois metropolitan area; or

(iv) Glen Tullman ceases to serve as either Executive Chairman of Company or Chairman of the Board of Directors of Company (or a role of similar effect).

4.4.2 Upon the occurrence of an event constituting Good Reason, Executive shall have the right to terminate his employment hereunder and receive the benefits set forth in Section 4.5 below, upon delivery of written notice to Company no later than the close of business on the sixtieth (60th) day following the date of the first occurrence of the event or condition that would constitute Good Reason; provided, however, that such termination shall not be effective before the expiration of thirty (30) days after receipt by Company of such written notice (the “Cure Period”) if Company has not cured such Good Reason within the Cure Period. If Company so effects a cure, the Good Reason notice shall be deemed rescinded and of no force or effect. Executive must terminate employment as a result of a Good Reason no later than thirty (30) days after the lapse of the Cure Period, and the effective date of a Good Reason termination shall be the date of Executive’s “separation from service” (within the meaning of Treas. Reg. Section 1.409A-1(h)).

4.5 Rights upon Termination. Upon termination of Executive’s employment and the Employment Period, the following shall apply:

4.5.1 Termination by Company Without Cause or by Executive for Good Reason. If Company terminates Executive’s employment and the Employment Period without Cause, or if Executive terminates Executive’s employment and the Employment Period for Good Reason, Executive shall be entitled to receive payment of the Accrued Amounts in lump sum form no later than ten (10) days after the Termination Date. The term “Accrued Amounts” means (A) any Base Salary amounts that have been accrued but have not yet been paid as of the Termination Date, (B) any earned but unpaid Performance Bonus with respect to the Fiscal Year preceding the Fiscal Year in which the Termination Date occurs, calculated at a comparable percentage as other executives if unpaid Performance Bonus has not yet been declared when the Termination Date occurs, and (C) any reimbursement for any expense reimbursable under this Agreement, and any vested benefits (including vested rights in Company equity, subject to the terms of the RSU Agreements) payable to Executive hereunder accrued through the Termination Date. In addition, subject to Section 4.7 below, Company shall, subject to Section 7.14, be obligated to pay Executive (or provide Executive with), as severance, an amount equal to three-quarters (0.75) of Executive’s Base Salary, payable in nine (9) equal monthly installments commencing on the date the Release (as defined in Section 4.7) becomes irrevocable (but subject to Section 7.14), and will be payable regardless of whether Executive obtains other employment and is compensated therefor (but only so long as Executive is not in violation of Section 5 hereof).
4.5.2 Termination With Cause by Company or Without Good Reason by Executive. If Company terminates Executive’s employment and the Employment Period with Cause, or if Executive terminates Executive’s employment and the Employment Period other than as a result of a Good Reason, Company shall, subject to Section 7.14, be obligated to pay Executive the Accrued Amounts in lump sum form no later than ten (10) days after the Termination Date.

4.5.3 Termination Upon Death or Disability. If Executive’s employment and the Employment Period are terminated because of the death or disability of Executive, Company shall, subject to Section 7.14, be obligated to pay Executive or, if applicable, Executive’s estate, the Accrued Amounts in lump sum form no later than ten (10) days after the Termination Date.

4.6 Effect of Notice of Termination. Any notice of termination by Company, whether for Cause or without Cause, may specify that, during the notice period, if any, Executive need not attend to any business on behalf of Company.

4.7 Requirement of a Release; Exclusivity of Severance Payments under this Agreement. As a condition to the receipt of the severance payments to be provided to Executive pursuant to Section 4.5.1 upon termination of Executive’s employment, Executive shall (i) execute and deliver to Company a general release of employment claims against Company and its affiliates in a form reasonably satisfactory to Company (the “Release”) within forty-five (45) days following the Termination Date (provided that Executive shall not be required to release any rights to severance payments and termination benefits under Section 4 of this Agreement, any vested rights to compensation or benefits which Executive may have as of the Termination Date or any indemnification or related rights under Company’s certificate of incorporation or Bylaws or under any indemnification agreement between Company and Executive or any rights under any director and officer liability insurance policy maintained by Company for the benefit of Executive) and (ii) continue to comply with the restrictive covenants set forth in the Employee Proprietary Information, Inventions Assignment and Non-Solicitation Agreement attached hereto as Exhibit D (the “Restrictive Covenant Agreement”). In the event Executive breaches any material provision of the Restrictive Covenant Agreement, all severance payments and termination benefits under this Section 4 shall cease immediately and Executive shall forfeit his right to any future severance payments. In addition, the severance payments and termination benefits to be provided to Executive pursuant to this Section 4 upon termination of Executive’s employment shall constitute the exclusive payments in the nature of severance or termination pay or salary continuation which shall be due to Executive upon a termination of employment and shall be in lieu of any other such payments under any severance plan, program, policy or other arrangement which has heretofore been or shall hereafter be established by Company or any of its affiliates, other than payments to Executive related to any future retention or incentive plan, or under any indemnification or related rights under Company’s certificate of incorporation or Bylaws or under any indemnification agreement between Company and Executive or under any director and officer liability insurance policy maintained by Company for the benefit of Executive.
5. **Proprietary Information, Inventions Assignment and Non-Solicitation Agreement**

Executive expressly acknowledges and agrees that, as a condition to Executive’s employment with Company pursuant to this Agreement, Executive shall execute the Restrictive Covenant Agreement and comply with the provisions thereof.

6. **No Set-Off or Mitigation.**

Company’s obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which Company may have against Executive or others. In no event shall Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Executive under any of the provisions of this Agreement and, except as otherwise provided herein, such amounts shall not be reduced whether or not Executive obtains other employment.

7. **Miscellaneous.**

7.1 **Valid Obligation.** This Agreement has been duly authorized, executed and delivered by Company and has been duly executed and delivered by Executive and is a legal, valid and binding obligation of Company and of Executive, enforceable in accordance with its terms.

7.2 **No Conflicts.** Executive represents and warrants that the performance by him of his duties hereunder will not violate, conflict with, or result in a breach of any provision of, any agreement to which he is a party.

7.3 **Applicable Law.** This Agreement shall be construed in accordance with the laws of the State of Illinois, without reference to Illinois choice of law statutes or decisions.

7.4 **Severability.** The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity or enforceability of any other provision. In the event any clause of this Agreement is deemed to be invalid, the parties shall endeavor to modify that clause in a manner which carries out the intent of the parties in executing this Agreement.

7.5 **No Waiver.** The waiver of a breach of any provision of this Agreement by any party shall not be deemed or held to be a continuing waiver of such breach or a waiver of any subsequent breach of any provision of this Agreement or as nullifying the effectiveness of such provision, unless agreed to in writing by the parties.

7.6 **Notices.** All demands, notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be personally delivered or by commercial overnight delivery service, to the parties at the addresses set forth below:

To Company: Livongo Health, Inc.
444 N. Michigan Avenue, Ste. 3400
Chicago IL 60611
Attention: Legal Department

To Executive: [__________________]
[__________________]
Or, if the above is blank, to the address most recently included in Company’s records.
Notices shall be deemed given upon the earliest to occur of (i) receipt by the party to whom such notice is directed, if hand delivered or (ii) on the first business day (other than a Saturday, Sunday or legal holiday in the jurisdiction to which such notice is directed) following the day the same is deposited with the commercial carrier if sent by commercial overnight delivery service. Each party, by notice duly given in accordance therewith may specify a different address for the giving of any notice hereunder.

7.7 Assignment of Agreement. This Agreement shall be binding upon and inure to the benefit of Executive and Company, their respective successors and permitted assigns and Executive’s heirs and personal representatives. Neither party may assign any rights or obligations hereunder to any person or entity without the prior written consent of the other party. This Agreement shall be personal to Executive for all purposes.

7.8 Entire Agreement; Amendments. Except as otherwise provided herein, this Agreement contains the entire understanding between the parties, and there are no other agreements or understandings between the parties with respect to Executive’s employment by Company and his obligations thereto other than Executive’s indemnification or related rights under Company’s certificate of incorporation or Bylaws or under any indemnification agreement between Company and Executive and Executive’s rights under any equity incentive plans or bonus plans of Company. Executive acknowledges that he is not relying upon any representations or warranties concerning his employment by Company except as expressly set forth herein. No amendment or modification to the Agreement shall be valid except by a subsequent written instrument that (i) explicitly states the intent of both parties hereto to supplement the terms herein and (ii) is signed by both parties hereto. For the avoidance of doubt, Company hereby acknowledges and agrees that Executive’s continued business-related activities for and on behalf of 7wire Ventures and its affiliates will not result in a violation of the Restrictive Covenant Agreement, and anything set forth in the Restrictive Covenant Agreement to the contrary shall be of no force or effect. In the event that the terms of this Agreement and the Restrictive Covenant Agreement are in opposition to each other, the terms of this Agreement shall control.

7.9 Dispute Resolution and Arbitration. The following procedures shall be used in the resolution of disputes:

7.9.1 Dispute. In the event of any dispute or disagreement between the parties under this Agreement, the disputing party shall provide written notice to the other party that such dispute exists. The parties will then make a good faith effort to resolve the dispute or disagreement. If the dispute is not resolved upon the expiration of fifteen (15) days from the date a party receives such notice of dispute, the entire matter shall then be submitted to arbitration as set forth in Section 7.9.2.
7.9.2 **Arbitration.** If the dispute or disagreement between the parties has not been resolved in accordance with the provisions of Section 7.9.1 above, then, except for disputes relating to the Restrictive Covenant Agreement described in Section 5, any such controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration to be held in Chicago, Illinois, in accordance with the rules of the American Arbitration Association then in effect. Any decision rendered herein shall be final and binding on each of the parties and judgment may be entered thereon in the appropriate state or federal court. The arbitrators shall be bound to strict interpretation and observation of the terms of this Agreement.

7.10 **Survival.** For avoidance of doubt, the provisions of Sections 4.5, 4.7, 5, 6 and 7 of this Agreement shall survive the expiration or earlier termination of the Employment Period.

7.11 **Headings.** Section headings used in this Agreement are for convenience of reference only and shall not be used to construe the meaning of any provision of this Agreement.

7.12 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

7.13 **Taxes.** Executive shall be solely responsible for taxes imposed on Executive by reason of any compensation and benefits provided under this Agreement and all such compensation and benefits shall be subject to applicable withholding.

7.14 **Section 409A.** It is intended that this Agreement will comply with Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If an amendment of the Agreement is necessary in order for it to comply with Section 409A, the parties hereto will negotiate in good faith to amend the Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible. No action or failure by Company in good faith to act, pursuant to this Section 7.14, shall subject Company to any claim, liability, or expense, and Company shall not have any obligation to indemnify or otherwise protect Executive from the obligation to pay any taxes pursuant to Section 409A.

In addition, notwithstanding any provision to the contrary in this Agreement, if Executive is deemed on the date of his “separation from service” (within the meaning of Treas. Reg. Section 1.409A-1(h)) to be a “specified employee” (within the meaning of Treas. Reg. Section 1.409A-1(i)), then with regard to any payment that is required to be delayed pursuant to Section 409A(a)(2)(B) of the Code (the “Delayed Payments”), such payment shall not be made prior to the earlier of (i) the expiration of the six (6) month period measured from the date of his “separation from service” and (ii) the date of his death. Any payments due under this Agreement other than the Delayed Payments shall be paid in accordance with the normal payment dates specified herein. In no case will the delay of any of the Delayed Payments by Company constitute a breach of Company’s obligations under this Agreement. For the provision of payments and benefits under this Agreement upon termination of employment, reference to Executive’s “termination of employment” (and corollary terms) with Company shall be construed to refer to Executive’s “separation from service” from Company (as determined under Treas. Reg. Section 1.409A-1(h) with the work threshold of less than fifty percent (50%) of the prior level of services, as uniformly applied by Company) in tandem with Executive’s termination of employment with Company. For purposes of this Agreement, all rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Section 409A of the Code.
In addition, to the extent that any reimbursement or in-kind benefit under this Agreement or under any other reimbursement or in-kind benefit plan or arrangement in which Executive participates during the term of Executive’s employment under this Agreement or thereafter provides for a “deferral of compensation” within the meaning of Section 409A of the Code, (i) the amount eligible for reimbursement or in-kind benefit in one calendar year may not affect the amount eligible for reimbursement or in-kind benefit in any other calendar year (except that a plan providing medical or health benefits may impose a generally applicable limit on the amount that may be reimbursed or paid), (ii) the right to reimbursement or an in-kind benefit is not subject to liquidation or exchange for another benefit, and (iii) subject to any shorter time periods provided herein, any such reimbursement of an expense or in-kind benefit must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred.

If the sixty (60)-day period following a “separation from service” begins in one calendar year and ends in a second calendar year (a “Crossover 60-Day Period”), then any severance payments contingent upon the Release and that would otherwise occur during the portion of the Crossover 60-Day Period that falls within the first year will be delayed and paid in a lump sum during the portion of the Crossover 60-Day Period that falls within the second year.

7.15 280G Excise Tax. If a payment or transfer by Company to or for the benefit of Executive (a “Payment”) that is subject to taxation under Code Section 4999 or ineligible for deduction by Company as an “excess parachute payment” as defined in Code Section 280G is triggered by a sale of Company’s equity or assets, if so agreed by Company and Executive, the Payment may be presented to Company’s shareholders for a vote, with full disclosure of all material facts about the Payment. If the Payment is approved by the vote of shareholders who owned (before the relevant sale) more than 75 percent (75%) of the voting power of all of Company’s outstanding stock and the disclosure and other procedures are otherwise in compliance with Code Section 280G(b)(5) and other applicable Department of Treasury regulations promulgated under Code Section 280G, then the Payment may proceed under the exemption set forth in Code Section 280G(b)(5).

[Signatures continued on next page]
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written, to be effective at the Effective Date.

EXECUTIVE

/s/ Lee Shapiro
Lee Shapiro

LIVONGO HEALTH, INC.

By: /s/ Glen Tullman
Name: Glen Tullman
   Executive Chairman
THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this “Agreement”) is made as of June 25, 2019 (the “Effective Date”), by and between Livongo Health, Inc., a Delaware corporation (“Company”), and James Pursley, an individual resident in the State of Illinois (“Executive”) (each of the Company and Executive, a “Party” and, together, the “Parties”).

RECITALS

WHEREAS, the Company and Executive previously entered into an offer letter, dated March 17, 2014 (the “Offer Letter”), with an effective start date of April 14, 2014 (the “Original Effective Date”);

WHEREAS, the Parties desire to amend and restate the offer letter on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, of the mutual agreements and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows, effective as of the Effective Date:

AGREEMENT

1. Employment

The Executive’s employment shall continue under this Agreement, commencing on the Effective Date. Company hereby employs Executive, and Executive hereby agrees to be employed as Chief Commercial Officer of Company, pursuant to the terms of this Agreement. Executive shall have the duties and responsibilities and perform such administrative and managerial services customary to the position of Chief Commercial Officer or as shall be reasonably delegated or assigned to Executive by the Chief Executive Officer of Company from time to time. Executive shall report directly to the Chief Executive Officer. Executive shall devote a substantial portion of his business time to his responsibilities hereunder; provided that Executive shall be entitled to devote time to outside boards of directors, outside business activities, personal investments, civic and charitable activities, and personal education and development so long as such activities do not create a conflict with Executive’s employment hereunder or materially interfere with the performance of Executive’s duties. Executive will be based at the Company’s offices located in Chicago, Illinois.

2. Effective Date and Term

The parties acknowledge that Executive’s employment relationship with the Company is at-will. Either Executive or the Company may terminate the employment relationship at any time, with or without Cause. The provisions in Section 4.5 govern the amount of compensation, if any, to be provided to Executive upon termination of employment and do not alter this at-will status. The period from the commencement of Executive’s employment by the Company on the
3. Compensation and Benefits.

In consideration for the services Executive shall render under this Agreement, Company shall provide or cause to be provided to Executive the following compensation and benefits:

3.1 Base Salary. After the Effective Date, during the Employment Period, Company shall pay to Executive an initial annual base salary at a rate of $270,000 per annum, subject to all required federal and state withholding taxes, which base salary shall be payable in accordance with Company’s normal payroll practices and procedures (but no less frequently than monthly). Executive’s base salary shall be reviewed annually during the Employment Period by the Company’s Board of Directors ("Board") or its Compensation Committee (the “Compensation Committee”), as applicable, in its sole discretion, and may be adjusted from time to time based on Executive’s performance during the preceding year and such other factors as the Board or Compensation Committee may deem appropriate. Executive’s base salary, as such base salary may be adjusted, is hereinafter referred to as the “Base Salary.”

3.2 Performance Bonus. During the Employment Period, Executive shall be eligible to receive cash bonuses (each a “Performance Bonus”), based upon such terms and criteria determined by the Board or Compensation Committee, in its sole discretion. Executive’s target Performance Bonus for Fiscal Year 2019 shall be one hundred percent (100%) of his Base Salary (the “Target Performance Bonus”). No portion of the Performance Bonus is guaranteed; however, if awarded, the Performance Bonus shall be paid at the same time as similar bonuses are paid to other senior executives of Company. For purposes of this Agreement, the term “Fiscal Year” shall mean the fiscal year of Company.

3.3 Benefits. During the Employment Period and as otherwise provided hereunder, Executive shall be entitled to the following:

3.3.1 Participation in Benefit Plans. Executive shall be eligible to participate in the Company’s group health and/or dental benefits, including immediate coverage for Executive and his eligible dependents, which are generally available to Company’s senior executive employees and as provided by Company in accordance with its applicable group benefit plan coverage terms. In addition, Executive shall be eligible to participate in any profit sharing plan, retirement plan, group life insurance plan or other insurance plan or medical expense plan maintained by Company for its senior executives generally, in accordance with the terms, including general eligibility criteria, therein.

3.3.2 Perquisites. Executive shall be entitled to such other benefits and perquisites that are generally available to Company’s senior executive employees and as provided in accordance with Company’s plans, practices, policies and programs for senior executive employees of Company, in accordance with the terms, including general eligibility criteria, therein. Notwithstanding any terms to the contrary in this Agreement, Company reserves the right to amend, modify, suspend or terminate any benefit, perquisite, incentive or compensation plans and programs at any time from time to time, in its sole discretion.
3.3.3 **Indemnification.** To the fullest extent permissible under applicable law, Executive shall be entitled to indemnification (including immediate advancement of all legal fees with respect to any claim for indemnification) and director and officers’ insurance coverage, to the extent made available to other directors and senior executives, in accordance with the certificate of incorporation or the bylaws of Company (the “Bylaws”) and all other applicable policies and procedures of Company for expenses incurred or damages paid or payable by Executive with respect to a claim against Executive based on actions or inactions by Executive in his capacity as a senior executive of Company.

3.4 **Expenses.** Company shall reimburse Executive for proper and necessary expenses incurred by Executive in the performance of his duties under this Agreement from time to time upon Executive’s submission to Company of invoices of such expenses in reasonable detail and subject to all standard policies and procedures of Company with respect to such expenses, as may be in effect from time to time.

3.5 **Equity-Based Awards.** Executive shall be eligible to participate in any applicable equity-based bonus, option or similar plan implemented by Company and generally available to its senior executive employees. The amount of any awards made thereunder shall be in the sole discretion of the Board, the Compensation Committee or such other applicable committee of the Board.

4. **Termination of the Services.**

Executive’s employment hereunder and the Employment Period may be terminated at any time as follows (the effective date of such termination hereinafter referred to as the “Termination Date”).

4.1 **Termination upon Death or Disability of Executive.**

4.1.1 Executive’s employment hereunder and the Employment Period shall terminate immediately upon the death of Executive. In such event, all rights of Executive and/or Executive’s estate (or named beneficiary) shall cease except for the right to receive payment of the amounts set forth in Section 4.5.3 of the Agreement.

4.1.2 Company may terminate Executive’s employment hereunder and the Employment Period upon the disability of Executive. For purposes of this Agreement, Executive shall be deemed to be “disabled” if Executive suffers any physical or mental incapacity that renders him unable to engage in any substantial gainful activity by reason of any medically-determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, as determined by Company in good faith. In the event of a dispute as to whether Executive is disabled, Company may refer Executive to a licensed practicing physician who is mutually acceptable to Executive and Company, and Executive agrees to submit to such tests and examination as such physician shall deem appropriate to determine Executive’s capacity to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months. In such event, the parties hereby agree that the decision of such physician

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as to the disability of Executive shall be final and binding on the parties. Any termination of the Employment Period under this Section 4.1.2 shall be effected without any adverse effect on Executive’s rights to receive benefits under any disability policy of Company, but shall not be treated as a termination without Cause.

4.2 Termination by Company for Cause. Company may terminate Executive’s employment hereunder and the Employment Period for Cause (as defined herein) upon written notice to Executive, which termination shall be effective on the date specified by Company in such notice. For purposes of this Agreement, the term “Cause” shall mean:

4.2.1 the willful failure, disregard or refusal by Executive to perform his duties and obligations hereunder (other than any such failure resulting from the disability of Executive), which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by the Company;

4.2.2 Executive’s conviction (or entry of a nolo contendere plea) of a crime or offense (i) constituting a felony or involving fraud or moral turpitude or (ii) involving the property of Company that results in a material loss to Company; provided that, in the event that Executive is arrested or indicted for such a crime or offense, then Company may, at its option, place Executive on paid leave of absence, pending the final outcome of such arrest or indictment;

4.2.3 any act of fraud or embezzlement with respect to Company or its business relations, or Executive’s violation of any law, which act or violation in the reasonable judgment of the Chief Executive Officer is materially and demonstrably injurious to the operations or financial condition of Company;

4.2.4 Executive’s material breach of any agreement with Company, which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by the Company; or

4.2.5 Executive’s willful failure or refusal to follow the Chief Executive Officer’s reasonable and lawful instructions consistent with this Agreement, which, to the extent it is curable by Executive, is not cured within thirty (30) days after written notice thereof is given to Executive by the Company;

provided, however, that no act or failure to act on Executive’s part shall be considered “willful” unless it is done, or omitted to be done, by Executive in bad faith or without reasonable belief that his action or omission was in the best interests of the Company.

4.3 Termination without Cause; Termination by Executive without Good Reason. Executive may terminate his employment and the Employment Period at any time for any reason, provided that Company requests that Executive provide at least thirty (30) days’ prior written notice to Company. Company may terminate Executive’s employment and the Employment Period without Cause, upon written notice to Executive. Upon termination of Executive’s employment with Company for any reason, Executive shall be deemed to have resigned from all positions with Company and its subsidiaries and the Board (provided that any such deemed resignations shall not affect Executive’s entitlement (if any) to severance pay and
benefits hereunder, and provided further that Executive agrees to execute any documents as may be requested by Company to reflect such
resignations).

4.4 Termination by Executive for Good Reason.

4.4.1 Executive may terminate Executive’s employment and the Employment Period for Good Reason, in accordance with the process set
forth below and in Section 4.4.2. For purposes of this Agreement, “Good Reason” shall mean the occurrence of any of the following after the Effective
Date:

(i) a failure of Company to meet its obligations in any material respect under this Agreement, including, without limitation, (x) a material
reduction in the Base Salary or Target Performance Bonus percentage without Executive’s written consent or (y) any failure to pay the Base Salary or
cashed and owed Performance Bonus (other than, in the case of clause (y), the inadvertent failure to timely pay immaterial amounts of the Base Salary
or earned and owed Performance Bonus, which payment is immediately made by Company upon notice from Executive); or

(ii) a material diminution in or other substantial adverse alteration in the nature or scope of Executive’s authority, duties and
responsibilities with Company set forth in this Agreement, including without limitation any requirement that Executive report to any person or entity
other than the Chief Executive Officer; or

(iii) Executive is required to relocate his principal place of business to a location that is more than fifty (50) miles from Company’s
offices located in Chicago, Illinois.

4.4.2 Upon the occurrence of an event or condition constituting Good Reason, Executive shall have the right to terminate his
employment hereunder and receive the benefits set forth in Section 4.5 below, provided that (i) Executive delivers written notice to Company no later
than the close of business on the sixtieth (60th) day following the date of the first occurrence of the event or condition that would constitute Good
Reason; (ii) during the period of thirty (30) days after receipt by Company of such written notice (the “Cure Period”) Company fails to cure such event
or condition that would constitute Good Reason (and provided that if Company so effects a cure, the Good Reason notice shall be deemed rescinded
and of no force or effect); and (iii) Executive terminates employment as a result of a Good Reason no later than thirty (30) days after the lapse of the
Cure Period.

4.5 Rights upon Termination. Upon termination of Executive’s employment and the Employment Period, the following shall apply:

4.5.1 Termination by Company Without Cause or for Good Reason. If Company terminates Executive’s employment and the
Employment Period without Cause (and other than due to his death or disability), or if Executive terminates Executive’s employment and the
Employment Period for Good Reason, Executive shall be entitled to receive payment of the Accrued Amounts in lump sum form no later than ten
(10) days after the Termination Date or such earlier date as may be required by applicable law (or otherwise such other applicable date as may be
specified in the agreement, plan or program governing the terms of such Accrued Amount). The term ‘Accrued Amounts’ means (A) any Base Salary
amounts that have been

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accrued but have not yet been paid as of the Termination Date, (B) to the extent unpaid as of the Termination Date, the Performance Bonus with respect to the Fiscal Year preceding the Fiscal Year in which the Termination Date occurs, provided that the amount of such payment will be calculated at a comparable percentage as other senior executives of Company if Executive’s Performance Bonus has not yet been declared when the Termination Date occurs and that, in such case, payment shall be made at the same time as performance bonuses are paid to other senior executives (but in no event later than the fifteenth (15th) day of third (3rd) month of the Fiscal Year immediately following the end of the Fiscal Year that the Performance Bonus is earned), and (C) any accrued but unused vacation, reimbursement for any expense reimbursable under this Agreement, and any vested benefits (including vested rights in Company equity) payable to Executive hereunder accrued through the Termination Date. In addition, subject to Section 4.7 below, Company shall, subject to Section 7.14, be obligated to pay Executive (or provide Executive with), as severance (the “Severance”), an amount equal to one-half (0.5) of Executive’s Base Salary, payable in six (6) equal monthly installments following the Termination Date, such amount to be payable regardless of whether Executive obtains other employment and is compensated therefor (but only so long as Executive is not in violation of Section 5 hereof). For the avoidance of doubt, any Severance will be based on Executive’s Base Salary in effect as of the Termination Date, provided that in the case of a termination of Executive’s employment with Company by Executive for Good Reason in connection with a reduction in Base Salary under Section 4.4.1(i), such Base Salary as determined without taking into account any such reduction.

4.5.2 Termination With Cause by Company or Without Good Reason by Executive. If Company terminates Executive’s employment and the Employment Period with Cause, or if Executive terminates Executive’s employment and the Employment Period other than as a result of a Good Reason, Company shall, subject to Section 7.14, be obligated to pay Executive the Accrued Amounts in lump sum form no later than ten (10) days after the Termination Date or such earlier date as may be required by applicable law (or otherwise such other applicable date as may be specified in the agreement, plan or program governing the terms of such Accrued Amount).

4.5.3 Termination Upon Death or Disability. If Executive’s employment and the Employment Period are terminated because of the death or disability of Executive, Company shall, subject to Section 7.14, be obligated to pay Executive or, if applicable, Executive’s estate, the Accrued Amounts in lump sum form no later than ten (10) days after the Termination Date or such earlier date as may be required by applicable law (or otherwise such other applicable date as may be specified in the agreement, plan or program governing the terms of such Accrued Amount).

4.6 Effect of Notice of Termination. Any notice of termination by Company, whether for Cause or without Cause, may specify that, during the notice period, if any, Executive need not attend to any business on behalf of Company.

4.7 Requirement of a Release; Exclusivity of Severance Payments under this Agreement. As a condition to the receipt of the Severance, Executive shall (i) execute and deliver to Company a separation agreement and general release of claims against Company and its affiliates in a form reasonably satisfactory to Company (the “Release”), which Release must
become effective and irrevocable within sixty (60) days following the Termination Date (provided that Executive shall not be required to release any rights to severance payments and termination benefits under Section 4 of this Agreement, any vested rights to compensation or benefits which Executive may have as of the Termination Date or any indemnification or related rights under Company’s certificate of incorporation or Bylaws or under any indemnification agreement between Company and Executive or any rights under any director and officer liability insurance policy maintained by Company for the benefit of Executive) and (ii) continue to comply with Executive’s obligations set forth in the Employee Proprietary Information, Inventions Assignment and Non-Solicitation Agreement executed by Executive on March 18, 2016 (the “Restrictive Covenant Agreement”). If the Release does not become effective and irrevocable within the period set forth in this Section 4.7, Executive will forfeit any right to receive the Severance. Subject to Section 7.14, upon the Release timely becoming effective and irrevocable, any installments of the Severance that otherwise would have been paid on or before the date that the Release becomes effective and irrevocable will be paid within ten (10) days following the date that the Release becomes effective and irrevocable, and any remaining installments will be paid in accordance with its schedule as described in this Agreement. In the event Executive breaches any material provision of the Restrictive Covenant Agreement, all payments of Severance shall cease immediately and Executive shall forfeit his right to any future Severance payments. In addition, the severance payments and termination benefits to be provided to Executive pursuant to this Section 4 upon termination of Executive’s employment shall constitute the exclusive payments in the nature of severance or termination pay or salary continuation which shall be due to Executive upon a termination of employment and shall be in lieu of any other such payments under any severance plan, program, policy or other arrangement which has heretofore been or shall hereafter be established by Company or any of its affiliates, other than payments to Executive related to any future retention or incentive plan, or under any indemnification or related rights under Company’s certificate of incorporation or Bylaws or under any indemnification agreement between Company and Executive or under any director and officer liability insurance policy maintained by Company for the benefit of Executive.

5. Proprietary Information, Inventions Assignment and Non-Solicitation Agreement.

Executive expressly acknowledges and agrees that, as a condition to Executive’s employment with Company pursuant to this Agreement, Executive previously executed the Restrictive Covenant Agreement and shall continue to comply with the provisions thereof.

6. No Set-Off or Mitigation.

Company’s obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which Company may have against Executive or others. In no event shall Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Executive under any of the provisions of this Agreement and, except as otherwise provided herein, such amounts shall not be reduced whether or not Executive obtains other employment.
7. **Miscellaneous**

7.1 **Valid Obligation.** This Agreement has been duly authorized, executed and delivered by Company and has been duly executed and delivered by Executive and is a legal, valid and binding obligation of Company and of Executive, enforceable in accordance with its terms.

7.2 **No Conflicts.** Executive represents and warrants that the performance by him of his duties hereunder will not violate, conflict with, or result in a breach of any provision of, any agreement to which he is a party.

7.3 **Applicable Law.** This Agreement shall be construed in accordance with the laws of the State of Illinois, without reference to Illinois’ choice of law statutes or decisions.

7.4 **Severability.** The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity or enforceability of any other provision. In the event any clause of this Agreement is deemed to be invalid, the parties shall endeavor to modify that clause in a manner which carries out the intent of the parties in executing this Agreement.

7.5 **No Waiver.** The waiver of a breach of any provision of this Agreement by any party shall not be deemed or held to be a continuing waiver of such breach or a waiver of any subsequent breach of any provision of this Agreement or as nullifying the effectiveness of such provision, unless agreed to in writing by the parties.

7.6 **Notices.** All demands, notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be personally delivered or by commercial overnight delivery service, to the parties at the addresses set forth below:

To Company:  
Livongo Health, Inc.  
444 N. Michigan Avenue, Ste. 3400  
Chicago IL 60611  
Attention: Chief Executive Officer

To Executive:  
At the address most recently contained in Company’s records

Notices shall be deemed given upon the earliest to occur of (i) receipt by the party to whom such notice is directed, if hand delivered or (ii) on the first business day (other than a Saturday, Sunday or legal holiday in the jurisdiction to which such notice is directed) following the day the same is deposited with the commercial carrier if sent by commercial overnight delivery service. Each party, by notice duly given in accordance therewith may specify a different address for the giving of any notice hereunder.

7.7 **Assignment of Agreement.** This Agreement shall be binding upon and inure to the benefit of (i) the heirs, executors, and legal representatives of Executive upon Executive’s death, and (ii) any successors of Company. Any such successor of Company will be deemed substituted for Company under the terms of this Agreement for all purposes. For this purpose,
“successor” means any person, firm, corporation, or other business entity which at any time, whether by purchase, merger, or otherwise, directly or indirectly acquires all or substantially all of the assets or business of Company. This Agreement shall be personal to Executive for all purposes. None of the rights of Executive to receive any form of compensation payable pursuant to this Agreement may be assigned or transferred except by will or the laws of descent and distribution. Any other attempted assignment, transfer, conveyance, or other disposition of Executive’s right to compensation or other benefits will be null and void.

7.8 Entire Agreement; Amendments. Except as otherwise provided herein, this Agreement contains the entire understanding between the parties and supersedes in its entirety Executive’s Offer Letter, and there are no other agreements or understandings between the parties with respect to Executive’s employment by Company and his obligations thereto other than Executive’s Restrictive Covenant Agreement (to the extent not modified by this Agreement), Executive’s indemnification or related rights under Company’s certificate of incorporation or Bylaws or under any indemnification agreement between Company and Executive and Executive’s rights under any equity incentive plans or bonus plans of Company. Executive acknowledges that he is not relying upon any representations or warranties concerning his employment by Company except as expressly set forth herein. No amendment or modification to the Agreement shall be valid except by a subsequent written instrument that (i) explicitly states the intent of both parties hereto to supplement, amend or modify the terms herein and (ii) is signed by both parties hereto.

7.9 Dispute Resolution and Arbitration. The following procedures shall be used in the resolution of disputes:

7.9.1 Dispute. If the dispute or disagreement between the parties has not been resolved in accordance with the provisions of Section 7.9.2 above, then, except for disputes relating to the Restrictive Covenant Agreement described in Section 5, any such controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration to be held in Chicago, Illinois, in accordance with the rules of the American Arbitration Association then in effect. Any decision rendered herein shall be final and binding on each of the parties and judgment may be entered thereon in the appropriate state or federal court. The arbitrators shall be bound to strict interpretation and observation of the terms of this Agreement.

7.10 Survival. For avoidance of doubt, the provisions of Sections 4.5, 4.7, 5, 6 and 7 of this Agreement shall survive the expiration or earlier termination of the Employment Period.

7.11 Headings. Section headings used in this Agreement are for convenience of reference only and shall not be used to construe the meaning of any provision of this Agreement.

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7.12 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

7.13 **Taxes.** Executive shall be solely responsible for taxes imposed on Executive by reason of any compensation and benefits provided under this Agreement and all such compensation and benefits shall be subject to applicable withholding.

7.14 **Section 409A of the Code.** It is intended that this Agreement will comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and any regulations and formal guidance promulgated thereunder ("Section 409A"), to the extent the Agreement is subject thereto, or otherwise be exempt from Section 409A so that none of the payments and benefits under this Agreement will be subject to the additional tax imposed under Section 409A, and the Agreement, including any ambiguities or ambiguous terms herein, shall be interpreted on a basis consistent with such intent. If an amendment of the Agreement is necessary in order for it to comply with Section 409A, the parties hereto will negotiate in good faith to amend the Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible. In no event shall Company or any of its parent or subsidiaries be subject to any claim, liability, or expense, and Company and any of its parent or subsidiaries shall not have any obligation to reimburse, indemnify, or hold harmless Executive for, or otherwise protect the Executive from his obligation to pay, any taxes, penalties, or fees imposed, or other costs incurred, as a result of Section 409A.

In addition, notwithstanding any provision to the contrary in this Agreement, if Executive is deemed on the date of his “separation from service” (within the meaning of Treas. Reg. Section 1.409A-1(h)) to be a “specified employee” (within the meaning of Treas. Reg. Section 1.409A-1(i)), then any payment that is required to be delayed pursuant to Section 409A(a)(2)(B) of the Code that otherwise would be scheduled to be paid within the first six (6) months following Executive’s separation from service, instead shall be paid on the first payroll date that occurs on or after the date six (6) months and one (1) day following the date of the Executive’s separation from service. All subsequent payments of Severance shall be paid in accordance with the scheduled payment dates specified herein. Notwithstanding the foregoing in this paragraph, in the event of Executive’s death following Executive’s separation from service but prior to the expiration of the six (6) month period following the separation from service, any payments of Severance delayed in accordance with the foregoing under this paragraph will be payable in a lump sum as soon as administratively practicable after the date of Executive’s death. In no case will the delay of any of such payments by Company constitute a breach of Company’s obligations under this Agreement. The provision for the payment of benefits and payments under this Agreement upon termination of employment, to the extent necessary to comply with Section 409A, references to Executive’s “termination of employment” or Termination Date (and corollary terms) with Company shall be construed to refer to Executive’s “separation from service” from Company within the meaning of Section 409A. All rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

In addition, to the extent that any reimbursement or in-kind benefit under this Agreement or under any other reimbursement or in-kind benefit plan or arrangement in which Executive
participates during the term of Executive’s employment under this Agreement or thereafter provides for a “deferral of compensation” within the meaning of Section 409A of the Code, (i) the amount eligible for reimbursement or in-kind benefit in one calendar year may not affect the amount eligible for reimbursement or in-kind benefit in any other calendar year (except that a plan providing medical or health benefits may impose a generally applicable limit on the amount that may be reimbursed or paid), (ii) the right to reimbursement or an in-kind benefit is not subject to liquidation or exchange for another benefit, and (iii) subject to any shorter time periods provided herein, any such reimbursement of an expense or in-kind benefit must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred.

Subject to the delay in payment required under the second paragraph of this Section 7.14, if the sixty (60)-day period following a “separation from service” begins in one calendar year and ends in a second calendar year (a “Crossover 60-Day Period”), then any Severance that is considered deferred compensation within the meaning of Section 409A that is contingent upon the Release and that otherwise would be paid (in accordance with Section 4.7) during the portion of the Crossover 60-Day Period that falls within the first year will be delayed and paid in a lump sum on Company’s first regularly scheduled payroll date occurring in the second year.

7.15 Protected Activity Not Prohibited. Executive understands that nothing in this Agreement will in any way limit or prohibit Executive from engaging in any Protected Activity. Protected Activity includes: (i) filing and/or pursuing a charge, complaint, or report with, or otherwise communicating, cooperating, or participating in any investigation or proceeding that may be conducted by any federal, state or local government agency or commission, including the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, and the National Labor Relations Board (“Government Agencies”); (ii) testifying in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of any party to this Agreement, or on the part of the agents or employees of any party to this Agreement, if Executive has been required or requested to attend the proceeding pursuant to a court order, subpoena, or written request from an administrative agency or the legislature; and/or (iii) disclosing information about unlawful acts in the workplace, including, but not limited to, sexual harassment, as protected by applicable law. Executive understands that in connection with such Protected Activity under clause (i) of this Section, Executive is permitted to disclose documents or other information as permitted by law, without giving notice to, or receiving authorization from, Company. Notwithstanding the foregoing, Executive agrees to take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute Company confidential information under the Restrictive Covenant Agreement to any parties other than the Government Agencies. Executive further understands that “Protected Activity” does not include the disclosure of any Company attorney-client privileged communications or attorney work product. Any language in the Restrictive Covenant Agreement regarding Executive’s right to engage in Protected Activity that conflicts with, or is contrary to, this Section is superseded by this Agreement. In addition, pursuant to the Defend Trade Secrets Act of 2016, Executive is notified that an individual will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (a) is made in confidence to a federal, state, or local government official (directly or indirectly) or to an attorney solely for the purpose of reporting or investigating a suspected violation of law,
or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if (and only if) such filing is made under seal. Further, an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the individual’s attorney and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order.

7.16 Limitation on Payments

7.16.1 Reduction of Severance Benefits. If any payment or benefit that Executive would receive from Company or any of its parent or subsidiaries or any other party whether in connection with the provisions in this Agreement or otherwise (the “Payment”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Code with respect to the Company or any of its parent or subsidiaries, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “Excise Tax”), then the Payment will be equal to the Best Results Amount. The “Best Results Amount” will be either (x) the full amount of the Payment or (y) a lesser amount that would result in no portion of the Payment being subject to the Excise Tax, whichever of those amounts, taking into account the applicable federal, state and local employment taxes, income taxes and the Excise Tax, results in Executive’s receipt, on an after-tax basis, of the greater amount. If a reduction in payments or benefits constituting parachute payments is necessary so that the Payment equals the Best Results Amount, reduction will occur in the following order: (A) reduction of cash payments in reverse chronological order (that is, the cash payment owed on the latest date following the occurrence of the event triggering the excise tax will be the first cash payment to be reduced); (B) cancellation of equity awards that were granted “contingent on a change in ownership or control” within the meaning of Section 280G of the Code in the reverse order of date of grant of the awards (that is, the most recently granted equity awards will be cancelled first); (C) reduction of the accelerated vesting of equity awards in the reverse order of date of grant of the awards (that is, the vesting of the most recently granted equity awards will be cancelled first); and (D) reduction of employee benefits in reverse chronological order (that is, the benefit owed on the latest date following the occurrence of the event triggering the excise tax will be the first benefit to be reduced). In no event will Executive have any discretion with respect to the ordering of Payment reductions. Executive will be solely responsible for the payment of all personal tax liability that is incurred as a result of the payments and benefits received under this Agreement, and Executive will not be reimbursed, indemnified, or held harmless by Company or any of its parent or subsidiaries for any of those payments of personal tax liability.

7.16.2 Determination of Excise Tax Liability. Unless Company and Executive otherwise agree in writing, the Company will select a professional services firm (the “Firm”) to make all determinations required under this Section 7.16, which determinations will be conclusive and binding upon Executive and Company for all purposes. For purposes of making the calculations required by this Section 7.16, the Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. Company and Executive will furnish to the Firm such information and documents as the Firm reasonably may request in order to make determinations under this Section 7.16. Company will bear the costs and make all payments for the Firm’s services in connection with any calculations.
contemplated by this Section 7.16. Company will have no liability to Executive for the determinations of the Firm.

[Signatures continued on next page]
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

EXECUTIVE

/s/ James Pursley
James Pursley

LIVONGO HEALTH, INC.

By: /s/ Zane Burke
Name: Zane Burke
AMENDMENT TO RESTRICTED STOCK AWARD AGREEMENT

THIS AMENDMENT TO RESTRICTED STOCK AWARD AGREEMENT (this “Amendment”) is entered by and between Livongo Health, Inc., a Delaware corporation (the “Company”) and Zane Burke (the “Recipient”), effective as of the date of the later of the Company’s or Recipient’s execution below (the “Effective Date”), pursuant to and in accordance with the Livongo Health, Inc. 2014 Stock Incentive Plan (the “Plan”), as amended, heretofore adopted by the Company.

RECITALS

WHEREAS, the Company and Recipient are parties to that certain Restricted Stock Award Agreement dated March 6, 2019, under the Plan (the “RSA Agreement”); and

WHEREAS, the Company and Recipient desire to amend the RSA Agreement in accordance with this Amendment.

NOW, THEREFORE, in consideration of the foregoing premises, of the mutual agreements and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows, effective as of the Effective Date:

AGREEMENT

1. Incorporation of the RSA Agreement. All capitalized terms which are not defined herein shall have the same meanings as set forth in the RSA Agreement, and the RSA Agreement, to the extent not inconsistent with this Amendment, are incorporated herein by this reference as though the same were set forth in its entirety. To the extent any terms and provisions of the RSA Agreement are inconsistent with the amendments set forth in Section 2 below, such terms and provisions shall be deemed superseded hereby. Except as specifically set forth herein, the RSA Agreement shall remain in full force and effect and its provisions shall be binding on the parties hereto.

2. Forfeiture of Restricted Stock. Section 2(c) of the RSA Agreement shall be amended and restated in its entirety to provide as follows:

“Forfeiture of Restricted Stock. If Recipient ceases providing Services to the Company as a result of being terminated with Cause prior to the one (1) year anniversary of the Employment Date, then any and all Vested Shares shall be forfeited to the Company immediately and Recipient shall have no further rights with respect to such forfeited shares. As used herein, the term “Cause” is as defined in the Employment Agreement.”

3. Repurchase Option. Section 4 and Annex C (including Exhibit 1 to Annex C) of the RSA Agreement shall be deleted in their entirety. Further, for purposes of clarification, neither the Company nor Investors will have any Repurchase Option for the Vested Shares.
4. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which together shall constitute one and the same instrument.

5. **Governing Law.** This Amendment is governed by the internal substantive laws, but not the choice of law rules, of the State of Delaware.

* * * *

[ signature page to follow ]

-2-
IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

RECIPIENT:

/s/ Zane Burke
Zane Burke

Date: 6/26/2019

LIVONGO HEALTH, INC.

/s/ Glen Tullman

Name: Glen Tullman
Title: Executive Chairman

Date: 6/26/2019
OFFICE LEASE
Castro Station
100, 150 and 200 W. Evelyn Avenue
Mountain View, California

Basic Lease Information

Date: December 21, 2014
Landlord: SFF CASTRO STATION, LLC, a California limited liability company
Tenant: LIVONGO HEALTH, INC., a Delaware corporation
Building (section 1.1): That certain building located at 150 W. Evelyn Avenue, Mountain View, California
Project (section 1.1): Those certain buildings located at 100, 150 and 200 W. Evelyn Avenue, Mountain View, California, and the parcel(s) of land on which the buildings are located
Premises (section 1.1): A portion of the first floor of the Building located at 150 W. Evelyn Avenue, comprising 6,530 square feet of rentable area and commonly known as Suite 150
Parking (section 1.4): Three (3) unreserved parking spaces per 1,000 rentable square feet of Premises (for an initial parking space total of nineteen (19) as of the Commencement Date)
Lease Term (section 2.1): Approximately sixty-one (61) months
Commencement Date (section 2.1): The date that Landlord delivers the Premises to Tenant in its existing “as is” condition, which date is anticipated to be January 1, 2015.
Expiration Date (section 2.1): The last day of the sixty-first (61st) full calendar month following the Commencement Date
Base Rent (section 3.1(a)):

<table>
<thead>
<tr>
<th>Month</th>
<th>Monthly Base Rent</th>
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<tr>
<td>Lease Months 1-12*</td>
<td>$44,731.00</td>
</tr>
<tr>
<td>Lease Months 13-24</td>
<td>$46,072.00</td>
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<tr>
<td>Lease Month 61</td>
<td>$51,855.00</td>
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Lease Month 1 shall commence on the Commencement Date and end on the last day of the first full calendar month thereafter, and each subsequent Lease Month shall be the calendar month commencing on the day after the expiration of the prior Lease Month.

* Notwithstanding anything contained herein to the contrary, the Base Rent payable hereunder shall be fully abated until the date (the “Rent Commencement Date”) that is one (1) month (i.e., 30 days) following the Commencement Date.

Rent Payment Address (section 3.3): c/o Cushman & Wakefield, P.O. Box 45257, San Francisco, CA 94145

Tenant’s Percentage Share (section 4.1(c)): 5.69%

Permitted Use (section 6.1): General Office, research and development

Service Hours (section 7.2): 8 A.M. to 6 P.M. (“Business Hours”) Monday through Friday (except union holidays and legal holidays) (“Business Days”)

Letter of Credit Amount (Article 27): $178,922.00

Tenant’s Address (section 30.1): At the Premises

Landlord’s Address (section 30.1): c/o PSAI Realty Partners, LLC, 155 Montgomery St., Suite 1600, San Francisco, California 94104

Landlord’s Broker (section 32.1): Cassidy Turley

Tenant’s Broker (section 32.1): Newmark Cornish and Carey

Exhibits:
- Exhibit A — Plan Outlining Premises
- Exhibit B — Approved Plans
- Exhibit C — Rules and Regulations
- Exhibit D — Form Letter of Credit
The foregoing Basic Lease Information is incorporated in and made a part of this Lease. If there is any conflict between the Basic Lease Information and any other part of this Lease, the former shall control.

TENANT:

LIVONGO HEALTH, INC., a Delaware corporation

By /s/ Glen Tullman
Name    Glen Tullman
Title:   CEO Livongo Health

LANDLORD:

SFF CASTRO STATION, LLC,
a California limited liability company,

By SFF Realty Fund, L.P.,
a Delaware limited partnership
its Manager

By: PSAI Realty Partners, LLC,
a Delaware limited liability company
its General Partner

By /s/ Erik A. Foraker
Name    Erik A. Foraker
Title    Managing Director
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Exhibit A  Plan Outlining the Premises
Exhibit B  Approved Plans
Exhibit C  Rules and Regulations
Other Attachments (if any)
OFFICE LEASE

THIS LEASE, made as of the date specified in the Basic Lease Information by and between the landlord specified in the Basic Lease Information ("Landlord"), and the tenant specified in the Basic Lease Information ("Tenant"),

WITNESSETH:

ARTICLE 1

Premises

1.1 Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, subject to the terms, covenants and conditions set forth in this Lease, the space (the “Premises”) substantially shown outlined on the floor plan attached hereto as Exhibit A and described in the Basic Lease Information, which Premises are located in the building (the “Building”) described in the Basic Lease Information. The Building is part of a larger Project commonly known as Castro Station consisting of 100, 150 and 200 W. Evelyn Avenue, Mountain View, California (collectively, the “Project”). As used in this Lease, the term “Project” shall include the parcel or parcels of land on which the Project is located and all appurtenances thereto and all improvements located thereon (including, without limitation, the buildings located at 100, 150 and 200 W. Evelyn Avenue, Mountain View, California). During the Lease Term, Tenant shall have the nonexclusive right, in common with other tenants of the Project, to use only for their intended purposes of lobbies, entrances, stairs, elevators and other public portions of the Project, that are designated by Landlord from time to time as common areas and not leased to or allocated for the exclusive use of another tenant of the Project. Landlord shall have the right from time to time to change the size, location, configuration, character or use of any such common areas, construct additional improvements or facilities in any such common areas, or close any such common areas; provided, however that Tenant shall at all times have the right to use the number of parking spaces specified in the Basic Lease Information. Tenant shall not interfere with the rights of Landlord and other tenants of the Project to use such common areas. All of the windows and outside decks or terraces and walls of the Premises and any space in the Premises used for shafts, stacks, pipes, conduits, ducts, electric or other utilities, sinks or other Building facilities, and the use thereof and access thereto through the Premises for the purposes of operation, maintenance and repairs, are reserved to Landlord.

1.2 Tenant acknowledges that Tenant has inspected the Premises, the Building and the Project or has had the Premises, the Building and the Project inspected by professional consultants retained by Tenant, Tenant is familiar with the condition of the Premises, the Building and the Project, the Premises, the Building and the Project are suitable for Tenant’s purposes, and the condition of the Premises, the Building and the Project is acceptable to Tenant. Landlord shall have no obligation to construct or install any improvements in the Premises, the Building or the Project or to remodel, renovate, recondition, alter or improve the Premises, the Building or the Project in any manner, and Tenant shall accept the Premises “as is” on the Commencement Date. For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a person certified pursuant to
Section 4459.2 of the California Government Code (a Certified Access Specialist). Tenant hereby waives any and all rights it otherwise might now or hereafter have under Section 1938 of the California Civil Code. Landlord and Tenant expressly agree that there are are and shall be no implied warranties of merchantability, habitability, fitness for a particular purpose, or any other kind arising out of this Lease and there are and shall be no warranties that extend beyond the warranties, if any, expressly set forth in this Lease.

1.3 No easement for light, air or view is included with or appurtenant to the Premises. Any diminution or shutting off of light, air or view by any structure which may hereafter be erected (whether or not constructed by Landlord) shall in no way affect this Lease or impose any liability on Landlord.

1.4 Notwithstanding section 1.1 of this Lease relating to use of the common areas of the Project for parking, Tenant shall have the right to use only the number of parking spaces specified in the Basic Lease Information. No parking spaces shall be reserved for the exclusive use of Tenant. Tenant shall use such parking spaces solely for parking automobiles of Tenant’s officers, employees and visitors. Tenant shall not, at any time, use more than the number of parking spaces specified in the Basic Lease Information. Tenant shall comply with all Rules and Regulations and all laws now or hereafter in effect relating to the use of parking spaces.

1.5 As of the Commencement Date, Landlord shall cause, at Landlord’s sole cost and expense and without reimbursement, the Base Building Systems (as defined below) serving the Premises and the Base Building (as defined below) to be in good working order and condition and the existing improvements in the interior of the Premises to be in good working order and condition; provided that the foregoing shall not imply any representation or warranty as to the useful life of such systems, nor shall the foregoing diminish Tenant’s responsibility pursuant to section 10.1 below to perform any repairs, modifications or improvements to the same necessitated after the Commencement Date, whether by reason of Tenant’s use of the same, Tenant’s Alterations (as defined below), ordinary wear and tear, or otherwise. The foregoing warranty by Landlord specifically excludes any equipment that is installed by Tenant following the Commencement Date and any malfunctioning of any Building systems due to Tenant’s Alterations or Tenant’s acts or omissions. As used in this Lease, the “Base Building Systems” means the plumbing lines and equipment (but not including plumbing fixtures), HVAC (but not including any HVAC systems installed by Tenant after the date hereof or any modifications to the existing HVAC systems made by Tenant following the date hereof), sprinklers, electrical (including panels and outlets), and interior lighting (but not including interior lighting installed Tenant after the date hereof or any modifications to the existing interior lighting made by Tenant following the date hereof). For purposes of the foregoing, “Base Building” means the structural portions of the Building (including exterior walls, roof, foundation and core of the Building), and the exterior of the Building.
ARTICLE 2

Term

2.1 The terms and provisions of this Lease shall be effective as of the date of this Lease. The Lease Term shall be the term specified in the Basic Lease Information (the "Lease Term"), which shall commence on the commencement date specified in the Basic Lease Information (the "Commencement Date") and, unless extended or sooner terminated as hereinafter provided, shall end on the expiration date specified in the Basic Lease Information (the "Expiration Date"). If Landlord, for any reason whatsoever, does not deliver possession of the Premises to Tenant on the Commencement Date, this Lease shall not be void or voidable and Landlord shall not be liable to Tenant for any loss or damage resulting therefrom, but in such event, the Commencement Date shall be postponed until the date on which Landlord delivers possession of the Premises to Tenant.

2.2 At any time during the Lease Term, Landlord may deliver to Tenant a notice confirming the Commencement Date and the Expiration Date as determined in accordance with this Lease, which notice Tenant shall execute and return to Landlord within five (5) Business Days following receipt.

2.3 Tenant may enter the Premises prior to the Commencement Date solely for the purpose of space planning, installing Alterations, fixtures and equipment in the Premises for use by Tenant following the Commencement Date. Tenant shall not conduct any business operations in the Premises or use the Premises for any other purpose before the Commencement Date. If Tenant enters the Premises for any such permitted purpose prior to the Commencement Date, all of the agreements and covenants of Tenant in this Lease, except the payment of rent, shall apply and be in force, including, without limitation, the provisions of Article 6, Article 8 and Article 13 of this Lease. Before Tenant enters the Premises, Tenant shall deliver certificates of insurance to Landlord as required by Article 13 of this Lease. During any such entry into the Premises before the Commencement Date, Tenant shall not interfere in any way with any construction work or other activity by Landlord in the Premises and Tenant shall cooperate in all reasonable ways with Landlord while Landlord is carrying on any construction work or other activity within the Premises.

ARTICLE 3

Rent

3.1 Tenant shall pay to Landlord the following amounts as rent for the Premises:

(a) Commencing as of the Rent Commencement Date and thereafter during the Lease Term, Tenant shall pay to Landlord, as monthly rent, the base rent specified in the Basic Lease Information (the "Base Rent").

(b) Commencing as of the Commencement Date and thereafter during each calendar year or part thereof during the Lease Term, Tenant shall pay to Landlord, as additional rent, Tenant’s Percentage Share (as hereinafter defined) of the total dollar amount of all Operating Expenses (as hereinafter defined) paid or incurred by Landlord in such calendar year.

(c) Commencing as of the Commencement Date and thereafter during each calendar year or part thereof during the Lease Term, Tenant shall pay to Landlord, as additional rent, Tenant’s Percentage Share of the total dollar amount of all Property Taxes (as hereinafter defined) paid or incurred by Landlord in such calendar year.

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Throughout the Lease Term, Tenant shall pay, as additional rent, all other amounts of money and charges required to be paid by Tenant under this Lease, whether or not such amounts of money and charges are otherwise designated “additional rent.” As used in this Lease, “rent” shall mean and include all Base Rent, all additional rent and all other amounts payable by Tenant in accordance with this Lease.

3.2 The additional rent payable pursuant to sections 3.1(b) and 3.1(c) hereof shall be calculated and paid in accordance with the following procedures:

(a) Within thirty (30) days prior to the first day of each calendar year during the Lease Term, or as soon thereafter as practicable, Landlord shall give Tenant written notice of Landlord’s estimate of the amounts payable under sections 3.1(b) and 3.1(c) hereof for the ensuing calendar year. On or before the first day of each month during such ensuing calendar year, Tenant shall pay to Landlord, as monthly rent, one twelfth of such estimated amounts. If such notice is not given for any calendar year, Tenant shall continue to pay on the basis of the prior calendar year’s estimate until the month after such notice is given. If at any time it appears to Landlord that the amounts payable under sections 3.1(b) and 3.1(c) hereof for the current calendar year will vary from Landlord’s estimate, Landlord may, by giving written notice to Tenant, revise its estimate for such calendar year. If Landlord delivers its estimate after the first day of a calendar year, or if Landlord revises its estimate for a calendar year, then upon no less than thirty (30) days prior written notice subsequent payments by Tenant for such calendar year shall be based on such late or revised estimate, as the case may be, with an appropriate adjustment to the amount of such subsequent payments such that, prior to the end of such calendar year or portion thereof during the Lease Term, Tenant shall have paid Landlord’s entire estimate of the amounts payable under sections 3.1(b) and 3.1(c) hereof for such calendar year.

(b) Within a reasonable time after the end of each calendar year, Landlord shall give Tenant a written statement of the amounts payable under sections 3.1(b) and 3.1(c) hereof for such calendar year certified by Landlord. If such statement shows an amount owing by Tenant that is less than the estimated payments for such calendar year previously made by Tenant, Landlord shall credit the excess to the next succeeding monthly installments payable under sections 3.1(b) and 3.1(c) hereof. If such statement shows an amount owing by Tenant that is more than the estimated payments for such calendar year previously made by Tenant, Tenant shall pay the deficiency to Landlord within thirty (30) days after delivery of such statement. Failure by Landlord to give any notice or statement to Tenant under this section 3.2 shall not waive Landlord’s right to receive, and Tenant’s obligation to pay, the amounts payable by Tenant under sections 3.1(b) and 3.1(c) hereof. During the Lease Term, but in no event more often than once in any one (1) year period, Tenant or its authorized employee or representative shall have the right to inspect the books of Landlord relating to Operating Expenses, Property Taxes and other amounts charged to Tenant as additional rent pursuant to section 3.1, after giving reasonable prior written notice to Landlord and during the business hours of Landlord at Landlord’s office in the Project or at such other location as Landlord may designate, for the purpose of verifying the information in such statement; provided that, if Tenant utilizes an independent accountant to perform such review, then such accountant shall be one of national standing which is reasonably acceptable to Landlord which shall, along with Tenant, be
required to execute a confidentiality agreement prepared by Landlord; provided further that Tenant shall have no right to inspect such books pertaining to any given period more than one hundred twenty (120) days after Landlord shall have delivered the written statement pertaining to such period. If Tenant’s audit of Landlord’s books and records shows an aggregate overstatement of Operating Expenses owed by Tenant of five percent (5%) or more and Landlord’s auditors concur in such findings (or, in the absence of such concurrence, such overstatement is confirmed by a court of competent jurisdiction or such other dispute resolution mechanism as to which the parties mutually agree in writing), then Landlord shall pay to Tenant, Tenant’s reasonable cost of conducting the audit (either for internal or outside auditors) not to exceed Ten Thousand Dollars ($10,000). Internal auditors shall be billed at the hourly payroll cost of those employees to Tenant (based on a 40 hour work week and including wages and benefits) multiplied by the reasonable number of hours spent auditing plus reasonable travel costs. If Tenant’s audit shows a difference of less than five percent (5%), then Tenant shall be responsible for all costs of such review.

(c) If the Lease Term ends on a day other than the last day of a calendar year, the amounts payable by Tenant under sections 3.1(b) and 3.1(c) hereof applicable to the calendar year in which the end of the term occurs shall be prorated on the basis which the number of days from the commencement of such calendar year to and including the date on which the end of the term occurs bears to three hundred sixty five (365).

Termination of this Lease shall not affect the obligations of Landlord and Tenant pursuant to section 3.2(b) hereof to be performed after such termination.

3.3 Tenant shall pay all monthly rent (i.e., monthly installments of Base Rent and monthly installments of Landlord’s estimates of amounts payable under sections 3.1(b) and 3.1(c) hereof) to Landlord, in advance, on or before the first day of each and every calendar month during the Lease Term, without notice, demand, deduction or offset, in lawful money of the United States of America. Landlord instructs Tenant to pay all such monthly rent to the address specified therefor in the Basic Lease Information, or to such other person or at such other place as Landlord may from time to time designate in writing. Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant’s designation of such payments, to satisfy any obligations of Tenant hereunder, in such order and amounts as Landlord, in its sole discretion, may elect. If Tenant’s obligation to pay Base Rent hereunder commences on a day other than the first day of a calendar month, or if the Lease Term terminates on a day other than the last day of a calendar month, then the Base Rent payable for such partial month shall be appropriately prorated on the basis of a thirty (30)-day month. Upon signing this Lease, Tenant shall pay to Landlord an amount equal to the Base Rent for the first full calendar month of the Term in which monthly Base Rent is payable, which amount Landlord shall apply to the Base Rent for such first full calendar month.
ARTICLE 4
Operating Expenses and Property Taxes Definitions

4.1 The following terms shall have the definitions herein specified:

(a) “Operating Expenses” shall mean all costs and expenses paid or incurred by Landlord in connection with the ownership, management, operation, maintenance, repair and/or replacement of the Project or providing services in accordance with this Lease, including, without limitation, the following: (i) salaries, wages, other compensation and benefits for personnel engaged in the management, operation, maintenance or repair of the Project (which, for employees working for other properties in addition to the Real Property, shall be allocated proportionately to reflect the time spent working in connection with the Real Property); (ii) uniforms provided to such personnel; (iii) premiums and other charges incurred by Landlord with respect to fire, other casualty, rent and liability insurance, any other insurance as is deemed necessary or advisable in the reasonable judgment of Landlord, or any insurance required by the holder of any mortgage or deed of trust encumbering any portion of the Project; (iv) costs of repairing any insured casualty to the extent of the deductible amount under the applicable insurance policy; (v) water and sewer charges or fees (excluding initial connection fees); (vi) license, permit and inspection fees; (vii) sales, use and excise taxes on goods and services purchased by Landlord; (viii) telephone, delivery, postage, stationery supplies and other expenses; (ix) management fees and expenses not materially exceeding management fees normally payable for comparable management services in comparable buildings in the Mountain View market (provided that such management fees and expenses, in the aggregate, shall be no more than 3% of the gross revenues of the Project in any calendar month nor less than $1.50 per square foot per year of the Project); (x) costs and expenses for electricity, chilled water, air conditioning, water for heating, gas, fuel, steam, heat, lights, power and other energy related utilities required in connection with the operation, maintenance and repair of the Project; (xi) equipment lease payments; (xii) repairs to and physical maintenance of the Project, including costs incurred in connection with the parking areas serving the Project (including costs of painting, restriping, and resurfacing the parking areas of the Project) and costs incurred with respect to the repair and replacement of worn out or broken building systems (including HVAC systems), equipment, facilities, parts and installations; (xiii) window cleaning, security, guard, extermination, water treatment, garbage and waste disposal, rubbish removal, plumbing and other services; (xiv) inspection or service contracts for elevator, electrical, mechanical and other building equipment and systems; (xv) supplies, tools, materials and equipment used in connection with the management, operation, maintenance or repair of the Project; (xvi) accounting, legal and other professional fees and expenses (excluding legal fees incurred by Landlord relating to disputes with specific tenants or the negotiation, interpretation or enforcement of specific leases); (xvii) painting the exterior or the public or common areas of the Project and the cost of maintaining the sidewalks, landscaping and other common areas of the Project; (xviii) the cost of furniture, draperies, carpeting and other customary and ordinary items of personal property (excluding paintings, sculptures or other works of fine art) provided by Landlord for use in common areas of the Project or in the building office, such costs to be reasonably amortized as determined by Landlord; (xix) all costs and expenses resulting from work, labor, supplies, materials or services similar or in addition to, or in lieu of, any of the foregoing, or resulting from compliance with any laws, ordinances, rules, regulations or orders with which the Project was not required to comply as of the date of this Lease, or to comply with any amendment or other change to the enactment or interpretation of any applicable laws from its enactment or interpretation on or before the date of this Lease; (xx) building office rent or rental value for office space reasonably necessary for the proper management and operation of the Project; and (xxi) all costs and expenses of contesting by appropriate legal proceedings any matter concerning managing, operating, maintaining or repairing the Project or the amount or validity of any Property Taxes, except to the extent incurred in connection with lease negotiations or disputes.
with specific tenants; (xxii) cost of maintaining, repairing and replacing all personal property, fixtures and equipment (including window washing machinery) used in the management, operation, maintenance or repair of the Project and exterior window coverings provided by Landlord and carpeting in public corridors and common areas (provided that any replacements of such items that are capital in nature shall be amortized as determined by Landlord, together with interest at the rate of eight and one-half percent (8.5%) per annum, or such higher annual rate as Landlord may actually have to pay, on the unamortized balance); and (xxiii) the cost, reasonably amortized as determined by Landlord, together with interest at the rate of eight and one-half percent (8.5%) per annum, or such higher annual rate as Landlord may actually have to pay, on the unamortized balance, of all capital improvements made to the Project after the date of this Lease or capital assets acquired by Landlord after the date of this Lease that are (A) required to comply with any conservation program or required by any law, ordinance, rule, regulation or order that are first enacted, or first interpreted to apply to the Project, after the date of this Lease or (B) performed primarily to reduce current or future operating costs, to upgrade Project security, to otherwise improve the operating efficiency of the Project, or for the protection of the health and safety of the occupants of the Project.”

Anything contained in the preceding paragraph to the contrary notwithstanding, Operating Expenses shall not include (1) Property Taxes, (2) depreciation on the Project (except as specified above), (3) costs of tenants’ improvements, (4) real estate brokers’ commissions, (5) principal and interest (6) capital improvements (except the cost of capital improvements and capital assets and interest thereon as specified above), (7) cost of repairs, replacements, and the like paid for by insurance proceeds, (8) the cost of any alterations or improvements to the Project to correct any construction defects or to correct any violations with existing laws existing as of the Commencement Date, (9) repairs necessitated by condemnation or casualty to the extent that Landlord is reimbursed by insurance proceeds or by other tenants of the Project, (10) costs incurred by Landlord in connection with any violation of law by Landlord or any other tenant (e.g., environmental laws) or in connection with a violation of by Landlord or any other tenant of any lease, (11) costs that are reimbursed directly by another tenant or for services provided to some tenants specifically but not to tenants as a whole, (12) depreciation of the Project and related improvements, (13) costs of renovating, redecorating or improving a specific tenant’s space or vacant space, (14) amounts paid to subsidiaries, affiliates or other Landlord-related parties for services rendered to Landlord in connection with the Project to the extent such charges materially exceed the amounts that would be paid by Landlord to an unaffiliated third party, (15) Landlord’s general overhead and administrative expenses which are not properly chargeable to operating expenses for the Project as part of the management fee or otherwise, (16) cost of new or additional buildings or other additional structures (except to the extent required under clause (xxiii) above), (17) income, excess profits, franchise, transfer, estate or inheritance taxes of Landlord, and (18) any other item of expense that, but for this exclusion, would be included twice, so that no duplication will occur.

Actual Operating Expenses that vary based on occupancy levels shall be adjusted to equal Landlord’s reasonable estimate of Operating Expenses for a full calendar year with one hundred percent (100%) of the total rentable area of the Project occupied during such full calendar year. Landlord shall have the right, from time to time, to equitably allocate some or all of the Operating Expenses for the Project among different portions or occupants of the Project (the “Cost Pools”), in Landlord’s discretion. The Operating Expenses within each such Cost Pool shall be allocated and charged to the tenants within such Cost Pool in an equitable and consistent manner over all expense years.

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(b) “Property Taxes” shall mean all taxes, assessments, excises, levies, fees and charges (and any tax, assessment, excise, levy, fee or charge levied wholly or partly in lieu thereof or as a substitute therefor or as an addition thereto) of every kind and description, general or special, ordinary or extraordinary, foreseen or unforeseen, secured or unsecured, whether or not now customary or within the contemplation of Landlord and Tenant, that are levied, assessed, charged, confirmed or imposed by any public or government authority on or against, or otherwise with respect to, the Project or any part thereof, any personal property used in connection with the Project. Property Taxes shall also include any costs and expenses incurred by Landlord in securing any Proposition 8 or other reduction in Property Taxes. Property Taxes shall also include any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property taxes and any taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent. Notwithstanding the foregoing, Property Taxes shall not include (i) net income (measured by the income of Landlord from all sources or from sources other than solely rent), excise profits, franchise, documentary transfer, inheritance or capital stock taxes of Landlord, unless levied or assessed against Landlord in whole or in part in lieu of, as a substitute for, or as an addition to any Property Taxes, or (ii) any tax, assessment, fee or charge paid by Tenant pursuant to section 5.1 hereof.

(c) “Tenant’s Percentage Share” shall mean the percentage specified in the Basic Lease Information.

ARTICLE 5
Other Taxes Payable by Tenant

5.1 In addition to all monthly rent and other charges to be paid by Tenant under this Lease, Tenant shall reimburse Landlord upon demand for all taxes, assessments, excises, levies, fees and charges, including, without limitation, all transit impact development fees, housing impact development fees and other payments related to the cost of providing facilities or services, whether or not now customary or within the contemplation of Landlord and Tenant, that are payable by Landlord and levied, assessed, charged, confirmed or imposed by any public or government authority upon, or measured by, or reasonably attributable to (a) the Premises, (b) the cost or value of any equipment, furniture, fixtures and other personal property located in the Premises or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, regardless of whether title to such improvements is vested in Tenant or Landlord, (c) any monthly rent or any additional rent payable under this Lease, including, without limitation, any gross receipts tax levied by any public or government authority with respect to the receipt of such rent, (d) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or (e) this transaction or any document to which Tenant is a party creating or
transferring an interest or an estate in the Premises. Such taxes, assessments, excises, levies, fees and charges shall not include net income (measured by the income of Landlord from all sources or from sources other than solely rent), franchise, documentary transfer, inheritance or capital stock taxes of Landlord, unless levied or assessed against Landlord in whole or in part in lieu of, as a substitute for, or as an addition to any such taxes, assessments, excises, levies, fees and charges. If it is unlawful for Tenant to reimburse Landlord for any such taxes, assessments, excises, levies, fees or charges, the Base Rent payable prior to the imposition thereof shall be increased to provide Landlord the same net Base Rent after the imposition thereof as Landlord received prior to the imposition of such taxes, assessments, excises, levies, fees or charges. All taxes, assessments, excises, levies, fees and charges payable by Tenant under this Article 5 shall be deemed to be, and shall be paid as, additional rent.

ARTICLE 6
Use; Environmental Matters

6.1 Tenant shall use the Premises only for the purposes described in the Basic Lease Information for Tenant’s business and no other purpose whatsoever without the prior written consent of Landlord, which may be withheld in Landlord’s sole discretion. Tenant shall not do or permit to be done in, on or about the Premises, nor bring or keep or permit to be brought or kept therein, anything which is prohibited by or will in any way conflict with any law, ordinance, rule, regulation or order now in force or which may hereafter be enacted, or which is prohibited by any property insurance policy carried by Landlord for the Project, or will in any way increase the existing rate of, or cause a cancellation of, or affect any property or other insurance for the Project or any part thereof or any of its contents. Tenant shall not do or permit anything to be done in, on or about the Premises which will in any way obstruct or interfere with the rights of Landlord or other tenants of the Project, or injure or annoy them. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable activity, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises or commit or suffer to be committed any waste in, on or about the Premises. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable activity, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises or commit or suffer to be committed any waste in, on or about the Premises. Tenant shall not bring into the Building any furniture, equipment, materials or other objects which overload the Building or any portion thereof.

6.2 Tenant shall not bring or keep, or permit to be brought or kept, in the Premises or the Project any “hazardous substance” (as hereinafter defined). Tenant shall not use, produce, process, manufacture, generate, treat, handle, store or dispose of any hazardous substance in the Premises or the Project, or use the Premises for any such purpose, or emit, release or discharge any hazardous substance into any air, soil, surface water or groundwater comprising the Premises or the Project, or permit any person using or occupying the Premises to do any of the foregoing. The preceding sentence shall not prohibit the ordinary use of any hazardous substance normally used in the operation of a general office for Tenant’s business as permitted by this Lease, provided the amount of any such hazardous substance does not exceed the quantity necessary for the normal operation of a general office in the ordinary course of business and the use, storage and disposal of such hazardous substance strictly comply with all applicable “environmental laws” (as hereinafter defined). Tenant shall comply, and shall cause all persons using or occupying the Premises to comply, with all environmental laws applicable to the use or occupancy of the Premises by Tenant or any operation or activity of Tenant therein.
6.3 Tenant shall indemnify and defend Landlord against and hold Landlord harmless from all claims, demands, actions, judgments, liabilities, costs, expenses, losses, damages, penalties, fines and obligations of any nature (including reasonable attorneys’ fees and disbursements incurred in the investigation, defense or settlement of claims) that Landlord may incur as a result of, or in connection with, claims arising from the presence, use, storage, transportation, treatment, disposal, release or other handling, on or about or beneath the Premises, of any hazardous substances introduced or permitted on or about or beneath the Premises by any act or omission of Tenant or its agents, officers, employees, contractors, invitees or licensees. The liability of Tenant under this section 6.3 shall survive the termination of this Lease with respect to acts or omissions that occur before such termination.

6.4 As used in this Lease, “hazardous substance” shall mean any substance or material that is described as a toxic or hazardous substance, waste or material or a pollutant or contaminant, or words of similar import, in any of the environmental laws, and includes asbestos, petroleum, petroleum products, polychlorinated biphenyls, radon gas, radioactive matter, and chemicals which may cause cancer or reproductive toxicity. As used in this Lease, “environmental laws” shall mean all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater.

6.5 Landlord represents that, to Landlord’s actual knowledge, as of the date of this Lease, there are no hazardous substances in the Building in material violation of applicable environmental laws in effect as of the date of this Lease.

ARTICLE 7
Services

7.1 Landlord shall maintain the public and common areas of the Project (such as lobbies, stairs, corridors and restrooms in the common areas, but not including any such areas located within any tenant’s premises), the roof, structural and exterior elements of the Project, and the Base Building Systems including, but not limited to, mechanical (heating, ventilating and air conditioning) and electrical systems of the Project (but excluding (i) any supplemental systems (such as air-conditioning systems or power generators, regardless of whether they are located inside or outside the Premises) and (ii) any equipment used in connection with the Premises and installed specifically for Tenant) in reasonably good order and condition. Any damage in or to any such areas, elements or systems caused by Tenant or any agent, employee, contractor, licensee or invitee of Tenant shall be repaired by Landlord at Tenant’s expense and Tenant shall reimburse Landlord therefor on demand, as additional rent. Landlord shall not be liable for any criminal acts of others or for any direct, consequential or other loss or damage related to any malfunction, circumvention or other failure of any access control service, device or personnel.
7.2 Landlord shall furnish the following utilities and services ("Basic Services") for the Premises: (i) during Business Days (as defined in the Basic Lease Information), electricity for Building standard lighting and power suitable for the use of the Premises for ordinary general office purposes, (ii) during Business Hours (as defined in the Basic Lease Information) on Business Days, heat and air conditioning required in Landlord’s judgment for the comfortable use and occupancy of the Premises for ordinary general office purposes, (iii) elevator service to the floor(s) of the Premises by nonattended automatic elevators for general office pedestrian usage, and (iv) on Business Days, janitorial services limited to emptying and removal of general office refuse, light vacuuming as needed and window washing as determined by Landlord. Notwithstanding the foregoing, however, Tenant may use water, heat, air conditioning, electric current, elevator and janitorial service in excess of that provided in Basic Services ("Excess Services," which shall include without limitation any power usage other than through existing standard 110-volt AC outlets; electricity and/or water consumed by Tenant in connection with any dedicated or supplemental heating, ventilating and/or air conditioning, computer power, telecommunications and/or other special units or systems of Tenant; chilled, heated or condenser water; or water used for any purpose other than ordinary drinking and lavatory purposes), provided that the Excess Services desired by Tenant are reasonably available to Landlord and to the Premises (it being understood that in no event shall Landlord be obligated to make available to the Premises more than the pro rata share of the capacity of any Excess Service available to the Building or the applicable floor of the Building, as the case may be), and provided further that Tenant complies with the procedures established by Landlord from time to time for requesting and paying for such Excess Services and with all other provisions of this Article 7. Landlord reserves the right to install in the Premises or the Building electric current and/or water meters (including, without limitation, any additional wiring, conduit or panel required therefor) to measure the electric current or water consumed by Tenant or to cause the usage to be measured by other reasonable methods (e.g. by temporary “check” meters or by survey). Subject to any temporary shutdown for repairs, for security purposes, for compliance with any legal restrictions, or due to fire or other casualty, acts of God, acts of terror, or other causes beyond the reasonable control of Landlord (A) Tenant shall have access to the Premises 24 hours a day, each day of the term of this Lease, (B) the services described in (iii) above shall be provided to the Premises 24 hours a day, each day of the term of this Lease, without additional charge to Tenant, and (C) subject to the above provisions of this Article 7 regarding availability of Excess Services and Tenant’s payment for Excess Services, the electricity, heat and air conditioning described in (i) and (ii) above shall be available to the Premises 24 hours a day, each day of the term of this Lease.

7.3 The cost of Basic Services shall be included in Operating Expenses. In addition, Tenant shall pay to Landlord upon demand (i) the cost, at Landlord’s prevailing rate, of any Excess Services used by Tenant, (ii) the cost of installing, operating, maintaining or repairing any meter or other device used to measure Tenant’s consumption of utilities, (iii) the cost of installing, operating, maintaining or repairing any Temperature Balance Equipment (as defined in section 7.4 below) for the Premises and/or any equipment required in connection with any Excess Services requested by Tenant, and (iv) any cost otherwise incurred by Landlord in keeping account of or determining any Excess Services used by Tenant. Landlord’s failure to bill Tenant for any of the foregoing shall not waive Landlord’s right to bill Tenant for the same at a later time.
7.4 If the temperature otherwise maintained in any portion of the Premises by the heating, air conditioning or ventilation system is affected as a result of (i) the type or quantity of any lights, machines or equipment (including without limitation typical office equipment) used by Tenant in the Premises, other than as provided by Landlord, (ii) the occupancy of such portion of the Premises to exceed the normal occupancy for use of the Premises described in the Basic Lease Information, as reasonably determined by Landlord, or (iii) any rearrangement of partitioning or other improvements, then at Tenant’s sole cost, Landlord may install any equipment, or modify any existing equipment (including the standard air conditioning equipment) Landlord deems necessary to restore the temperature balance (such new equipment or modifications to existing equipment termed herein “Temperature Balance Equipment”). Tenant agrees to keep closed, when necessary, draperies and/or window treatments which, because of the sun’s position, must be closed to provide for the efficient operation of the air conditioning system, and Tenant agrees to cooperate with Landlord and to abide by the regulations and requirements which Landlord may prescribe for the proper functioning and protection of the heating, ventilating and air conditioning system. Landlord makes no representation to Tenant regarding the adequacy or fitness of the heating, air conditioning or ventilation equipment in the Building to maintain temperatures that may be required for, or because of, any computer or communications rooms, machine rooms, conference rooms or other areas of high concentration of personnel or electrical usage, or any other uses other than or in excess of the fractional horsepower normally required for office equipment, and Landlord shall have no liability for loss or damage suffered by Tenant or others in connection therewith.

7.5 Landlord’s obligation to provide utilities and services for the Premises are subject to the Rules and Regulations of the Project, applicable laws (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to fire or other casualty, acts of God, or other causes beyond the control of Landlord. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future laws permitting the termination of this Lease due to such interruption, failure or inability.

7.6 In the event any governmental authority having jurisdiction over the Project promulgates or revises any applicable laws or building, fire or other code or imposes mandatory or voluntary controls or guidelines on Landlord or the Project relating to the use or conservation of energy or utilities or the reduction of automobile or other emissions (collectively “Controls”) or in the event Landlord is required or elects to make alterations to the Project in order to comply with such mandatory or voluntary Controls, Landlord may, in its sole discretion, comply with such Controls or make such alterations to the Project related thereto. Such compliance and the making of such alterations shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant.
7.7 Tenant acknowledges that Landlord may, from time to time, be required to disclose certain information concerning the Building’s energy use pursuant to California Public Resources Code Section 25402.10 and the regulations promulgated pursuant thereto (collectively, together with any future law or regulation regarding disclosure of energy efficiency data with respect to the Building, “Energy Disclosure Regulations”). Tenant shall cooperate with Landlord with respect to any disclosure and/or reporting requirements pursuant to any Energy Disclosure Regulations. Without limiting the generality of the foregoing, Tenant shall, within ten (10) days following request from Landlord, disclose to Landlord all information requested by Landlord in connection with the Energy Disclosure Regulations, including, but not limited to, the amount of power or other utilities consumed within the Premises for which the meters for such utilities are in Tenant’s name, the number of employees working within the Premises, the operating hours for Tenant’s business in the Premises, and the type and number of equipment operated by Tenant in the Premises. Tenant acknowledges that this information shall be provided on a non-confidential basis and may be provided by Landlord to the applicable utility providers, the California Energy Commission (and other governmental entities having jurisdiction with respect to the Energy Disclosure Regulations), and any third parties to whom Landlord is required to make the disclosures pursuant to the Energy Disclosure Regulations. Tenant agrees that none of the Landlord Parties (as defined below) shall be liable for any loss, cost, damage, expense or liability related to Landlord’s disclosure of such information provided by Tenant. In addition, Tenant represents to Landlord that any and all information provided by Tenant to Landlord pursuant to this paragraph shall be, to the best of Tenant’s knowledge, true and correct in all material respects and Tenant shall indemnify, defend and hold harmless the Landlord Parties from and against all claims, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable attorneys’ fees, incurred in connection with or arising from any breach of the foregoing representation and/or Tenant’s failure to timely provide any information requested by Landlord pursuant to this paragraph.

ARTICLE 8
Alterations

8.1 Tenant shall not make any alterations, additions, modifications or improvements in or to the Premises or any part thereof (including, without limitation, any initial improvements that may be constructed by Tenant in the Premises prior to first commencing business operations in the Premises), or attach any fixtures or equipment thereto (collectively, “Alterations”), without Landlord’s prior written consent, such consent not to be unreasonably withheld. The distribution of electrical outlets throughout the open space in the Premises (“Tenant’s Initial Alterations”) as shown on Exhibit B attached hereto are hereby approved. Notwithstanding the preceding sentence, Tenant may make such Alterations without Landlord’s consent only if the total cost is Twenty-Five Thousand Dollars ($25,000.00) or less and it will not affect in any way the structural, exterior, entry or roof elements of the Project or the Premises, or the mechanical, electrical, plumbing, utility or life safety systems of the Project, but Tenant shall give prior written notice of any such Alterations to Landlord. All Alterations in or to the Premises to which Landlord consents shall be made by Tenant at Tenant’s sole cost and expense as follows:
(a) Tenant shall submit to Landlord, for Landlord’s prior written approval, complete plans and specifications for all work to be done by Tenant. Such plans and specifications shall be prepared by responsible licensed architect(s) and engineer(s) approved in writing by Landlord, shall comply with all applicable codes, laws, ordinances, rules and regulations, shall not adversely affect the basic Building shell or any systems, components or elements of the Building, shall be in a form sufficient to secure the approval of all government authorities with jurisdiction over the approval thereof, and shall be otherwise satisfactory to Landlord in Landlord’s reasonable discretion. Landlord shall respond to Tenant’s plans and specifications (and to any resubmittal of plans) within ten (10) business days of Landlord’s receipt thereof; provided that Landlord’s non-response shall be deemed disapproval of the plans and specifications. Landlord may also require, as a condition to its consent to any Alterations, that any architect retained by Tenant in connection with such Alterations be certified as a Certified Access Specialist (CASp), and that following the completion of such Alterations, such architect shall certify the Premises as meeting all applicable construction-related accessibility standards pursuant to California Civil Code section 55.53. Tenant shall provide Landlord advance written notice of the licensed architect(s) and engineer(s) whom Tenant proposes to engage to prepare such plans and specifications. Landlord shall notify Tenant in writing whether Landlord approves or disapproves such architect(s) and engineer(s). Landlord’s approval or consent to any such work shall not impose any liability upon Landlord, and no action taken by Landlord in connection with such approval, including, without limitation, attending construction meetings of Tenant’s contractors, shall render Tenant the agent of Landlord for purposes of constructing any Alterations.

(b) If Landlord disapproves such plans and specifications, or any portion thereof, Landlord shall notify Tenant of such disapproval and of the revisions which Landlord requires in order to obtain Landlord’s approval within a reasonable period of time. Thereafter, Tenant shall submit to Landlord revised plans and specifications incorporating the revisions required by Landlord. Such revisions shall be subject to Landlord’s prior written approval. Tenant shall pay all costs, including the fees and expenses of the licensed architect(s) and engineer(s), in preparing such plans and specifications.

(c) Tenant shall pay for all work (including, without limitation, the cost of all utilities, permits, fees, taxes, and property and liability insurance premiums in connection therewith) required to make the Alterations. Tenant shall engage responsible licensed contractor(s) approved in writing by Landlord to perform all work. Tenant shall provide Landlord advance written notice of the contractors, subcontractors, mechanics and materialmen whom Tenant proposes to engage for the work, all of which shall be licensed in the State of California and capable of being bonded. Landlord shall notify Tenant in writing whether Landlord approves or disapproves such contractor(s) within a reasonable period of time. Approval will not be unreasonably withheld. All contractors and other persons shall at all times be subject to Landlord’s control while in the Project. Landlord shall have the right to require that Tenant post such security for the payment of the Alterations as Landlord reasonably determines is necessary and Landlord shall also have the right to require that any such contractor engaged by Tenant shall, prior to commencing work in the Premises, provide Landlord with a performance bond and a labor and materials payment bond from a surety reasonably acceptable to Landlord in the amount of the contract price for the work naming Landlord and Tenant.
(and any other person designated by Landlord) as co obligees. Prior to the commencement of any Alterations, if required by Landlord, Tenant shall provide Landlord with evidence that Tenant carries “Builder’s All Risk” insurance in form and amount approved by Landlord covering such Alterations. Under no circumstances shall Landlord be liable to Tenant for any liability, loss, cost or expense incurred by Tenant on account of Tenant’s plans and specifications, Tenant’s contractors or subcontractors, design of any work, construction of any work, or delay in completion of any work. In addition, Tenant acknowledges and agrees that any and all Alterations have not been expressly or impliedly required as a condition to the execution of this Lease for the use of the Premises permitted under this Lease or in lieu of payment of rent.

(d) Tenant shall give written notice to Landlord of the date on which construction of any work will be commenced at least twenty (20) days prior to such date (or such additional time as may be necessary under applicable laws) to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall cause all work to be performed by the licensed contractor(s) approved in writing by Landlord in accordance with the plans and specifications approved in writing by Landlord and in full compliance with all applicable codes, laws, ordinances, rules and regulations. Following the completion of the Alterations, Tenant shall cause Tenant’s architect to certify the Premises as meeting all applicable construction-related accessibility standards pursuant to California Civil Code Section 55.53.

(e) All changes in the plans and specifications approved by Landlord shall be subject to Landlord’s prior written approval, such approval not to be unreasonably withheld or delayed. If Tenant wishes to make any such change in such approved plans and specifications, Tenant shall have Tenant’s architect(s) and engineer(s) prepare plans and specifications for such change and submit them to Landlord for Landlord’s written approval. If Landlord disapproves such change, Landlord shall specify in writing the reasons for disapproval and such plans and specifications shall be revised by Tenant and resubmitted to Landlord for Landlord’s written approval. After Landlord’s written approval of such change, such change shall become part of the plans and specifications approved by Landlord.

(f) Tenant shall pay Landlord on demand prior to or during the course of construction of any Alterations an amount (the “Supervision Fee”) equal to three percent (3%) of the total cost of such Alteration (and for purposes of calculating the Supervision Fee, such cost shall include architectural and engineering fees, but shall not include permit fees) as compensation to Landlord for Landlord’s review of the plans and specifications for such Alterations and general oversight of the construction. In addition, Tenant shall pay to Landlord any direct costs incurred by Landlord with respect to any Alterations made by Tenant (beyond the normal services provided to tenants in the Project) and shall reimburse Landlord for all out-of-pocket expenses incurred by Landlord in connection with the review, approval and supervision of such Alterations. Notwithstanding the foregoing, the Supervision Fee shall not be payable with respect to the initial Alterations to be performed by Tenant in the Premises immediately following the Commencement Date.
8.2 All Alterations, including, without limitation, carpeting and all other improvements made pursuant to Exhibit B, if any, whether temporary or permanent in character, made in or to the Premises either by Tenant or by Landlord shall become part of the Project and Landlord’s property. At Landlord’s sole election any or all Alterations made for or by Tenant shall be removed by Tenant from the Premises at the expiration or sooner termination of this Lease and the Premises shall be restored by Tenant to their condition prior to the making of the Alterations, ordinary wear and tear excepted; provided, however, that upon Tenant’s express written request making specific reference to this section 8.2, Landlord shall advise Tenant at the time of Landlord’s approval of any Alteration requested by Tenant (or within ten (10) Business Days after receipt of Tenant’s notice to Landlord with respect to Cosmetic Alterations not requiring Landlord’s approval) whether Landlord will require the removal of the Alteration and restoration of the Premises to its previous condition at the expiration or sooner termination of this Lease (Landlord’s failure to expressly waive in writing Tenant’s removal obligation as to any Alterations shall preserve Landlord’s right to make its foregoing election with respect to such Alterations). The removal of the Alterations and the restoration of the Premises shall be performed by a general contractor selected by Tenant and approved by Landlord, in which event Tenant shall pay the general contractor’s fees and costs in connection with such work. Movable furniture, equipment, trade fixtures and personal property (except partitions) shall remain the property of Tenant and Tenant shall, at Tenant’s expense, remove all such property from the Premises at the end of the Lease Term. Termination of this Lease shall not affect the obligations of Tenant pursuant to this section 8.2 to be performed after such termination.

8.3 Tenant hereby acknowledges that notwithstanding anything contained herein to the contrary, Landlord is not and shall not be deemed to be a “participating owner” with respect to any Alterations made in or to the Premises. Prior to commencement of any work at the Premises, Tenant shall obtain from all contractors, subcontractors, laborers, materialmen, and suppliers performing work in the Premises for Tenant a writing or writings duly executed by authorized representatives of such contractors, subcontractors, laborers, materialmen, or suppliers containing the following language or substantially identical provisions:

“Contractor acknowledges and agrees that it is performing a work of improvement on a Tenant’s leasehold interest and agrees to limit any right to impose a mechanic’s or materialman’s lien on Tenant’s leasehold interest. Contractor further agrees that the work of improvement is not being performed at Landlord’s insistence, is not being performed for the benefit of Landlord or Landlord’s ownership (fee) interest, and that Landlord is not directing Contractor’s work. Contractor further agrees that Landlord is not participating in the work of improvement or in Tenant’s enterprise. Contractor further agrees that it will provide Landlord with written notice of commencement of work within three (3) business days following commencement, so that Landlord may timely post a Notice of Non-Responsibility. Contractor waives and relinquishes the benefit of the “participating owner” doctrine as stated in California law, and further waives and relinquishes any right it may otherwise have had to impose any mechanic’s or materialman’s lien on Landlord’s ownership interest in the property.”

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ARTICLE 9
Liens

9.1 Tenant shall keep the Premises and the Project free from mechanics', materialmen’s and all other liens arising out of any work performed, materials furnished or obligations incurred by Tenant. Tenant shall promptly and fully pay and discharge all claims on which any such lien could be based. Tenant shall have the right to contest the amount or validity of any such lien, provided Tenant gives prior written notice of such contest to Landlord, prosecutes such contest by appropriate proceedings in good faith and with diligence, and, upon request by Landlord, furnishes such bond as may be required by law to protect the Project and the Premises from such lien. Landlord shall have the right to post and keep posted on the Premises any notices that may be provided by law or which Landlord may deem to be proper for the protection of Landlord, the Premises and the Project from such liens, and to take any other action Landlord deems necessary to remove or discharge liens or encumbrances at the expense of Tenant.

ARTICLE 10
Maintenance and Repairs

10.1 Tenant shall, at all times during the Lease Term and at Tenant’s sole cost and expense, maintain and repair the Premises and every part thereof (including, without limitation (i) any supplemental systems (including air-conditioning systems or power generators, regardless of whether they are located inside or outside the Premises) installed specifically for Tenant at Tenant’s request, and (ii) any equipment used in connection with the Premises and installed specifically for Tenant at Tenant’s request) and all equipment, fixtures and improvements therein and keep all of the foregoing clean and in good order and operating condition, ordinary wear and tear and damage thereto by fire or other casualty excepted. Tenant hereby waives all rights under California Civil Code section 1941 and all rights to make repairs at the expense of Landlord or in lieu thereof to vacate the Premises as provided by California Civil Code section 1942 or any other law, statute or ordinance now or hereafter in effect. Landlord has no obligation and has made no promise to alter, remodel, improve, repair, maintain, decorate or paint the Premises, the Building or the Project or any part thereof or any equipment, fixtures or improvements therein. No representations respecting the condition of the Premises, the Building or the Project have been made to Tenant either by Landlord or by any real estate broker. Tenant’s obligation to keep the Premises and every part thereof and all equipment, fixtures and improvements located therein and/or exclusively serving the Premises in good condition and repair in accordance with this section 10.1 is part of the consideration for Landlord’s leasing the Premises to Tenant.

ARTICLE 11
Damage or Destruction

11.1 If the Building or the Premises, or any part thereof, is damaged by fire or other casualty before the Commencement Date or during the Lease Term, and this Lease is not terminated pursuant to sections 11.2 or 11.3 hereof, Landlord shall repair such damage and restore the Building and the Premises to substantially the same condition in which the Building and the Premises existed before the occurrence of such fire or other casualty (provided that Landlord shall have no obligation
to restore any above-Building standard improvements or Alterations in the Premises, unless the cost thereof is paid by Tenant in advance of such restoration, or any Alterations made by or for Tenant in the Premises following the Commencement Date) and this Lease shall, subject to the provisions of this Article 11, remain in full force and effect. If such fire or other casualty damages the Premises or common areas of the Project necessary for Tenant’s use and occupancy of the Premises and Tenant ceases to use any portion of the Premises as a result thereof, then during the period the Premises are rendered untenable by such damage Tenant shall be entitled to a reduction in monthly rent in the proportion that the area of the Premises rendered unusable by such damage bears to the total area of the Premises. Landlord shall not be obligated to repair any damage to, or to make any replacement of, any movable furniture, equipment, trade fixtures or personal property in the Premises or Alterations made by or for Tenant in the Premises following the Commencement Date. Tenant shall, at Tenant’s sole cost and expense, repair and replace all such movable furniture, equipment, trade fixtures, personal property and any Alterations made by or for Tenant in the Premises following the Commencement Date. Such repair and replacement by Tenant shall be done in accordance with Article 8 hereof. Tenant hereby waives California Civil Code sections 1932(2) and 1933(4), or any successor statute, providing for termination of hiring upon destruction of the thing hired.

11.2 If the Project or the Premises, or any part thereof, is damaged by fire or other casualty before the Commencement Date or during the Lease Term and (a) such fire or other casualty occurs during the last twelve (12) months of the Lease Term and the repair and restoration work to be performed by Landlord in accordance with section 11.1 hereof cannot, as reasonably estimated by Landlord, be completed within two (2) months after the occurrence of such fire or other casualty, or (b) the insurance proceeds received by Landlord in respect of such damage are not adequate to pay the entire cost, as reasonably estimated by Landlord, of the repair and restoration work to be performed by Landlord in accordance with section 11.1 hereof, or (c) the repair and restoration work to be performed by Landlord in accordance with section 11.1 hereof cannot, as reasonably estimated by Landlord, be completed within six (6) months after the occurrence of such fire or other casualty, then, in any such event, Landlord shall have the right, by giving written notice to Tenant within sixty (60) days after the occurrence of such fire or other casualty, to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) days nor more than sixty (60) days after the date such notice is given.

ARTICLE 12
Subrogation

12.1 Tenant waives on behalf of its insurers under all policies of property, liability and other insurance (excluding workers’ compensation) carried by Tenant during the Lease Term insuring or covering the Premises, or any portion or any contents thereof, or any operations therein, all rights of subrogation which any insurer might otherwise, if at all, have to any claims of Tenant against Landlord. Landlord waives on behalf of its insurers under all policies of property, liability and other insurance (excluding workers’ compensation) carried by Landlord during the Lease Term insuring or covering the Project or any portion or any contents thereof, or any operations therein, all rights of subrogation which any insurer might otherwise, if at all, have to any claims of Landlord against Tenant. Tenant shall, prior to or immediately after the date of this Lease, procure from each
ARTICLE 13
Indemnification and Insurance

13.1 Tenant hereby waives all claims against Landlord, Landlord’s members, partners, shareholders, trustees, and beneficiaries, the Project’s property manager, and Landlord’s asset manager, and their respective officers, directors, agents, servants, employees and independent contractors (collectively, the “Landlord Parties”), for damage to or loss or theft of any property or for any bodily or personal injury, illness or death of any person in, on or about the Premises, the Building or the Project arising at any time and from any cause whatsoever other than solely by reason of the gross negligence or willful misconduct of Landlord. Tenant further assumes all risk of, and agrees that Landlord and the Landlord Parties shall not be liable for, any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys’ fees) sustained as a result of the Premises not having been inspected by a Certified Access Specialist (CASp). Tenant shall indemnify, defend and hold harmless the Landlord Parties from and against all claims, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable attorneys’ fees, incurred in connection with or arising from (a) any cause whatsoever in, on or about the Premises or any part thereof arising at any time other than solely by reason of the gross negligence or willful misconduct of Landlord, or (b) any act or omission of Tenant or its agents, employees, contractors, invitees or licensees in, on or about any part of the Project other than the Premises (including, without limitation, any damage, bodily or personal injury, illness or death which is caused in part by Landlord), or (c) any breach by Tenant of the terms of this Lease. This Article 13 shall survive the termination of this Lease with respect to any damage, bodily or personal injury, illness or death occurring prior to such termination.

13.2 Tenant shall, at Tenant’s sole cost and expense, obtain and keep in force during the Lease Term the following insurance:

(a) Workers’ compensation as required by statute and employers’ liability insurance policies with a minimum limit of $1,000,000. The policies shall contain a Waiver of Subrogation endorsement in favor of the Landlord Parties.

(b) Automobile liability insurance policy containing liability symbol “1” (any automobile), including owned, non-owned and hired automobiles, with a combined single limit of $1,000,000 for bodily injury and property damage or equivalent approved by Landlord.
(c) An occurrence form commercial general liability insurance policy with coverage at least as broad as ISO form CG0001 with limits of not less than $1,000,000 combined single limit, each occurrence and aggregate, and will not provide for a self-insured retention or deductible in excess of $25,000. Such insurance shall include Legal Liability limits of $1,000,000 per occurrence, and $2,000,000 products/completed operations coverage and such insurance shall be primary insurance as respects any claims, losses or liability arising directly or indirectly from the Tenants operations and/or occupancy, and any other insurance maintained by Landlord shall be excess and not contributory with the insurance required hereunder. Said insurance policies shall include an endorsement, providing that the Landlord Parties and their officers and employees are additional insured using CG 2011 or comparable wording. The Additional Insured(s) endorsement shall be at no cost to Landlord or the other additional insured(s). All such insurance shall insure the performance by Tenant of the indemnity agreement set forth in section 13.1 hereof.

(d) Umbrella liability insurance policy with a limit of not less than $4,000,000. The policy shall provide excess coverage over Tenant’s Employers’ Liability, Automobile Liability and Commercial General Liability coverages.

(e) Insurance policy for full replacement cost of Tenant’s movable furniture, equipment, trade fixtures and personal property in the Premises and any Alterations made by or for Tenant after the Commencement Date, with special form cause of loss (including earthquake and flood if applicable) with agreed value endorsement. Business income and extra expense insurance coverage will be included in such amounts as will reimburse Tenant for direct or indirect loss of earnings for a period not less than twelve (12) months. All amounts received by Tenant under the insurance specified in this section 13.2 shall first be applied to the payment of the cost of the repair and replacement Tenant is obligated to do under Article 11 hereof.

13.3 Landlord reserves the right to increase the amounts of coverage specified in section 13.2 above from time to time provided such additional coverage is also customarily required by reasonably prudent landlords of comparable office buildings in the Mountain View office market. In addition, Landlord reserves the right to require that Tenant cause any of its contractors, vendors, movers or other parties conducting activities in or about or occupying the Premises to obtain and maintain insurance as determined by Landlord (which insurance coverages may be greater than those set forth in section 13.2 above and which may include types of insurance not specified above with respect to Tenant) and as to which Landlord and such other parties designated by Landlord shall be additional insureds.

13.4 All insurance required under this Article 13 and all renewals thereof shall be issued by good and responsible companies rated not less than A-:VIII in Best’s Insurance Guide and qualified to do and doing business in the State of California. Each policy, other than Tenant’s workers’ compensation insurance, shall: (a) provide that the policy shall not be canceled or altered without thirty (30) days’ prior written notice to Landlord and shall remain in effect notwithstanding any such cancellation or alteration until such notice shall have been given to Landlord and such period of thirty (30) days shall have expired; (b) protect Tenant, as named insured, and Landlord and all the other Landlord Parties and any other parties designated by Landlord, as additional insureds.
using such ISO or other form of endorsement as directed in writing by Landlord; (c) shall insure Landlord’s and such other parties’ contingent liability with regard to acts or omissions of Tenant; (d) include all waiver of subrogation rights endorsements necessary to effect the provisions of Article 12 above; (e) provide that the policy and the coverage provided shall be primary, that Landlord, although an additional insured, shall nevertheless be entitled to recovery under such policy for any damage to Landlord or the other Landlord Parties by reason of acts or omissions of Tenant, and that any coverage carried by Landlord shall be noncontributory with respect to policies carried by Tenant; (f) specifically include all liability assumed by Tenant under this Lease (provided, however, that such contractual liability coverage shall not limit or be deemed to satisfy Tenant’s indemnity obligations under this Lease); and (g) if subject to deductibles, shall provide for deductible amounts not in excess of those approved in advance in writing by Landlord in its sole discretion. Tenant shall deliver certificates of insurance, acceptable to Landlord, to Landlord at least ten (10) days before the Commencement Date and at least ten (10) days before expiration of each policy. In addition, upon the issuance thereof; Tenant shall deliver each such policy or a certified copy thereof to Landlord for retention by Landlord. If Tenant fails to insure or fails to furnish to Landlord upon notice to do so any such policy or certified copy and certificate thereof as required, Landlord shall have the right from time to time to effect such insurance for the benefit of Tenant or Landlord or both of them and all premiums paid by Landlord shall be payable by Tenant as additional rent on demand.

ARTICLE 14
Compliance With Legal Requirements

14.1 Tenant shall, at its sole cost and expense, promptly comply with all laws, ordinances, rules, regulations, orders and other requirements of any government or public authority now in force or which may hereafter be in force, with the requirements of any board of fire underwriters or other similar body now or hereafter constituted, and with any direction or certificate of occupancy issued pursuant to any law by any governmental agency or officer, insofar as any thereof relate to or affect the condition, use or occupancy of the Premises or the operation, use or maintenance of any equipment, fixtures or improvements in the Premises (collectively, “Legal Requirements”), excluding requirements of structural changes not related to or affected by Tenant’s acts or use of the Premises or by Alterations made by or for Tenant.

ARTICLE 15
Assignment and Subletting

15.1 Tenant shall not, directly or indirectly, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, assign this Lease or any interest herein or sublease the Premises or any part thereof; or permit the use or occupancy of the Premises by any person other than Tenant. Tenant shall not, directly or indirectly, without the prior written consent of Landlord, pledge, mortgage or hypothecate this Lease or any interest herein. This Lease shall not, nor shall any interest herein, be assignable as to the interest of Tenant involuntarily or by operation of law without the prior written consent of Landlord. For purposes of this Lease, any of the following transfers on a cumulative basis shall constitute an assignment of this Lease that requires
the prior written consent of Landlord: if Tenant is a corporation, the transfer of more than forty-nine percent (49%) of the stock of the corporation; if Tenant is a partnership or a limited liability company, the transfer of more than forty-nine percent (49%) of the capital or profits or partnership or membership interests in the partnership or limited liability company; and if Tenant is a trust, the transfer of more than forty-nine (49%) of the beneficial interest under the trust. Any of the foregoing acts without such prior written consent of Landlord shall be void and shall, at the option of Landlord, constitute a default that entitles Landlord to terminate this Lease. Notwithstanding the foregoing, a sale or transfer of the memberships, interests, shares, or stock of Tenant shall not be deemed an assignment or subletting (1) if such sale or transfer occurs in connection with any bona fide financing or capitalization for the benefit of Tenant without a change in the majority of the executive senior management of Tenant and without a reduction in Tenant’s net worth, or (2) if such sale or transfer is in connection with the initial public offering of Tenant’s stock or, thereafter, through the “over-the-counter” market or any recognized national or international securities exchange.

15.2 If Tenant wishes to assign this Lease or sublease all or any part of the Premises, Tenant shall provide Landlord written notice identifying the intended assignee or subtenant by name and address and specifying all of the terms of the intended assignment or sublease, and a copy of all documentation pertaining to such assignment or sublease (except that Landlord shall have the right to require that Tenant and such assignee or subtenant execute Landlord’s standard form of consent document). Tenant shall give Landlord such additional information as Landlord requests concerning the intended assignee or subtenant (including, without limitation, current financial statements) or the intended assignment or sublease. Without limiting or excluding other reasonable grounds for withholding Landlord’s consent to a proposed assignment or sublease, Landlord shall have the right to withhold consent if (a) the proposed assignee or subtenant or the use of the Premises to be made by the proposed assignee or subtenant is not consistent with the character and nature of other tenants and uses in the Project or is prohibited by this Lease or any laws, covenants, or restrictions applicable to the Project, (b) it is not demonstrated to the satisfaction of Landlord that the proposed assignee or subtenant has good business and moral character and reputation and is financially able to perform all of the obligations of Tenant under this Lease, (c) the assignment or subletting would increase the operating costs for the Project or the burden on the Project services, (d) the space will be used for a personnel or employment agency, an office or facility of any governmental or quasi-governmental agency or authority, or any use by or affiliation with a foreign government (including without limitation an embassy or consulate or similar office), (e) the proposed assignee or subtenant is a current tenant of the Project or a prospective tenant of the Project and a similar size and type space are available to such tenant on a direct basis from Landlord, or (f) the proposed assignee or subtenant is an entity or related to an entity with whom Landlord or any affiliate of Landlord has had adverse dealings.

15.3 Notwithstanding anything to the contrary in this Article 15, if Tenant wishes to assign this Lease or sublease all or any part of the Premises, Landlord shall have the right, by giving notice to Tenant within thirty (30) days after Tenant requests the consent of Landlord (i) in the event of an assignment of this Lease, to terminate this Lease effective as of the date such assignment would have become effective (and such termination date shall become the Expiration Date for purposes of this
Lease), or (ii) in the event of a sublease (A) to sublet from Tenant any portion of the Premises proposed by Tenant to be sublet, for the term for which such portion is proposed to be sublet, but at the lesser of the proposed sublease rent or the same rent (including additional rent as provided for in sections 3.1(b) and (c) above) as Tenant is required to pay to Landlord under this Lease for the same space, computed on a pro rata square footage basis, and during the term of such sublease Tenant shall be released of its obligations under this Lease with regard to the subject space or (B) to terminate this Lease as it pertains to the portion of the Premises so proposed by Tenant to be sublet effective as of the date such sublease would have become effective (and such termination date shall become the Expiration Date for purposes of this Lease with respect to such portion of the Premises).

15.4 Tenant shall pay to Landlord, as Landlord’s cost of processing each proposed assignment or subletting, an amount equal to the sum of (i) Landlord’s reasonable attorneys’ and other professional fees, plus (ii) the sum of $750.00 for the cost of Landlord’s administrative, accounting and clerical time (collectively, “Processing Costs”), and the amount of all direct and indirect costs and expenses incurred by Landlord arising from the assignee or sublessee taking occupancy of the subject space (including, without limitation, costs of freight elevator operation for moving of furnishings and trade fixtures, security service, janitorial and cleaning service, and rubbish removal service). Notwithstanding anything to the contrary herein, Landlord shall not be required to process any request for Landlord’s consent to an assignment or subletting until Tenant has paid to Landlord the amount of Landlord’s estimate of the Processing Costs and all other direct and indirect costs and expenses of Landlord and its agents arising from the assignee or subtenant taking occupancy.

15.5 No assignment, sublease, pledge, mortgage, hypothecation or other transfer, nor any consent by Landlord to any of the foregoing, shall release Tenant from any of Tenant’s obligations and liabilities under this Lease or alter the primary liability of Tenant to pay rent and to perform all other obligations to be performed by Tenant hereunder (and Landlord may proceed directly against Tenant without the necessity of exhausting any remedies against such assignee, subtenant or successor), or shall be deemed to be a consent to any subsequent pledge, mortgage, hypothecation, assignment, sublease, or occupation or use by another person. Tenant hereby acknowledges and agrees, and any instrument by which an assignment or sublease is accomplished shall expressly provide: (a) that the assignee or subtenant will perform and observe all the agreements, covenants and conditions to be performed and observed by Tenant under this Lease as and when performance and observance is due after the effective date of the assignment or sublease, (b) that Landlord will have the right to enforce such agreements, covenants and conditions directly against such assignee or subtenant, (c) in the case of a sublease, the subtenant shall, at Landlord’s election, attorn directly to Landlord in the event that this Lease is terminated for any reason, (d) in the case of an assignment, the assignee assumes all of Tenant’s obligations under this Lease arising on or after the date of the assignment, and (e) in the case of a sublease, the subtenant agrees to be and remain jointly and severally liable with Tenant for the payment of rent pertaining to the sublet space in the amount set forth in the sublease, and for the performance of all of the terms and provisions of this Lease. Any assignment or sublease without an instrument containing the foregoing provisions shall be void and shall, at the option of Landlord, constitute a default under this Lease. No assignment or sublease shall be valid and no assignee or subtenant shall take possession of the Premises or any part thereof.
until an executed duplicate original of such assignment or sublease (and any standard form of consent document required by Landlord) has been
delivered to Landlord, together with the written consent to such assignment or sublease of any guarantor of Tenant’s obligations hereunder; if any, and
certificates evidencing that such subtenant or assignee is carrying all insurance coverage required under this Lease has been provided to Landlord.

15.6 If Landlord consents in writing, then as condition to and in consideration for such consent, all “excess rent” (as hereinafter defined) derived
from such assignment or sublease shall be divided and paid fifty percent (50%) to Tenant and fifty percent (50%) to Landlord during each month of the
sublease term. Landlord’s share of such excess rent shall be computed monthly and shall be deemed to be, and shall be paid by Tenant to Landlord as,
additional rent. Tenant shall pay Landlord’s share of such excess rent to Landlord immediately as and when such excess rent is receivable by Tenant.
As used in this section 15.6, “excess rent” shall mean the amount by which the total money and other economic consideration to be paid by the
assignee or subtenant as a result of an assignment or sublease, whether denominated rent or otherwise, for any given month exceeds, in the aggregate,
the total amount of rent which Tenant is obligated to pay to Landlord under this Lease for such month (prorated to reflect the rent allocable to the
portion of the Premises subject to such assignment or sublease), less the reasonable costs paid by Tenant for brokers’ commissions and attorneys’ fees
with respect to such sublease or assignment, which costs shall be amortized without interest over the term of such assignment or sublease. As a
condition to Tenant recapturing its assignment or subletting costs as provided herein, Tenant shall provide to Landlord, within thirty (30) days of
Landlord’s execution of Landlord’s consent to the assignment or subletting, a detailed accounting of such costs and reasonable supporting documents,
such as receipts and construction invoices.

15.7 Any sublease hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term
of any sublease, Landlord shall have the right to: (a) treat such sublease as canceled and repossess the entire Premises by any lawful means, or
(b) require that such subtenant attorn to and recognize Landlord as its landlord under any such sublease. If Tenant shall be in default under this Lease,
Landlord is hereby irrevocably authorized, as Tenant’s agent and attorney-in-fact, to direct any subtenant to make all payments under or in connection
with a sublease directly to Landlord (which Landlord shall apply towards Tenant’s obligations under this Lease) until such default is cured. Such
subtenant shall rely on any representation by Landlord that Tenant is in default hereunder, without any need for confirmation thereof by Tenant.

15.8 Anything contained in this Article 15 to the contrary notwithstanding, but subject to sections 15.5, and 15.7 above, Tenant may assign this
Lease or sublet the Premises or any portion thereof, without Landlord’s consent, to any partnership, corporation or other entity which controls, is
controlled by, or is under common control with Tenant or Tenant’s parent (control being defined for such purposes as ownership of at least 50% of the
equity interests in, and the power to direct the management of, the relevant entity), or to any partnership, corporation or other entity resulting from a
merger or consolidation with Tenant or Tenant’s parent, or to any person or entity which acquires all or substantially all the assets of Tenant as a going
concern (including by means of a purchase of

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all or substantially all of Tenant’s stock) (collectively, an “Affiliate”), provided that (a) Landlord receives at least ten (10) days’ prior written notice of the assignment or subletting, together with evidence that the requirements of this section 15.8 have been met, (b) the Affiliate’s net worth is not less than Tenant’s net worth as of the date of this Lease or as of the date immediately prior to the assignment or subletting (or series of transactions of which the same is a part), whichever is greater, (c) except in the case of an assignment where the assignor is dissolved as a matter of law following the series of transactions of which the assignment is a part (e.g. a merger), the Affiliate remains an Affiliate for the duration of the subletting or the balance of the term in the event of an assignment, (d) the Affiliate assumes (in the event of an assignment) in writing all of Tenant’s obligations under this Lease, and agrees (in the event of a sublease) that such subtenant will, at Landlord’s election, attorn directly to Landlord in the event that this Lease is terminated for any reason, (e) Landlord receives a fully executed copy of an assignment or sublease agreement between Tenant and the Affiliate, (f) in the case of an assignment by means of a purchase of all or substantially all of Tenant’s stock, the essential purpose of such assignment is to transfer an active, ongoing business with substantial assets in addition to this Lease, and in the case of an assignment (by any means), or a sublease, the transaction is for legitimate business purposes unrelated to this Lease and the transaction is not a subterfuge by Tenant to avoid its obligations under this Lease or the restrictions on assignment and subletting contained herein, and (g) in the case of a sublease, the Affiliate executes and Tenant delivers to Landlord a fully executed counterpart of Landlord’s waiver and acknowledgement form for an Affiliate sublease.

15.9 Notwithstanding anything to the contrary contained in this Lease, during the first twelve months of the Lease Term, Tenant shall have the right, without Landlord’s consent (but with written notice to Landlord), to allow any person or company to occupy certain portions of the Premises (hereinafter “Permitted Occupants”) as long as (a) the space occupied by such parties is not separately demised from the balance of the Premises (i.e. separated from the balance of the space by a wall or other constructed device and having separate entrances to the common areas), (b) no more than twenty percent (20%) of the rentable square footage of the Premises, in the aggregate, is so used at any one time, (c) the use of the space is not a use which materially increases (i) the operating costs for the Project, (ii) the burden on the Building services, or (iii) the foot traffic, elevator usage or security concerns in the Project, or creates an increased probability of the comfort and/or safety of the Landlord and other tenants in the Project being unreasonably compromised or reduced (for example, but not exclusively, as a school or training facility, an entertainment, sports or recreation facility, retail sales to the public, medical offices, a personnel or employment agency, or an embassy or consulate or similar office), (d) Tenant does not realize a profit with respect to the space so used, and (e) the term of such occupancy shall expire on or before the date that is twelve (12) full calendar months following the Commencement Date. Tenant shall be fully responsible for the conduct of such parties within the Premises and the Project, and Tenant’s indemnification obligations set forth in Articles 6 and 13 of this Lease shall apply with respect to the conduct of such parties. Section 15.5 above shall be applicable to any such occupancy arrangement. Tenant shall supply Landlord with the terms of any such space sharing arrangement no later than ten (10) days prior to the effective date thereof. If such arrangement indicates that the sums payable thereunder for the value of the use of the space exceed the rent payable by Tenant hereunder for such space, that particular space sharing arrangement will be deemed to be a sublease for the purpose of applying the
provisions of section 15.6 above. Tenant shall not permit such party to occupy space in the Premises or conduct business in the Premises until Tenant delivers to Landlord a fully executed counterpart of Landlord’s waiver and acknowledgement form for space sharing arrangements in a mutually acceptable form.

ARTICLE 16
Rules and Regulations

16.1 Tenant shall faithfully observe and comply with the rules and regulations (the “Rules and Regulations”) set forth in Exhibit C and, after notice thereof, all modifications thereof and additions thereto from time to time made in writing by Landlord. If there is any conflict, this Lease shall prevail over the Rules and Regulations and any modifications thereof or additions thereto. Landlord shall not be responsible to Tenant for the noncompliance by any other tenant or occupant of the Project with any Rules and Regulations.

ARTICLE 17
Entry by Landlord

17.1 Landlord shall have the right to enter the Premises at any time upon reasonable notice to (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers, lenders or tenants, (c) determine whether Tenant is performing all of its obligations hereunder, (d) supply any service to be provided by Landlord, (e) post notices of nonresponsibility, and (f) make any repairs to the Premises, or make any repairs to any adjoining space or utility services, or make any repairs, alterations or improvements to any other portion of the Project, provided all such work shall be done as promptly as reasonably practicable and so as to cause as little interference to Tenant as reasonably practicable. Tenant waives all claims for damages for any injury or inconvenience to or interference with Tenant’s business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry. Landlord shall at all times have and retain a key with which to unlock all of the doors in, on or about the Premises (excluding Tenant’s vaults, safes and similar areas designated in writing by Tenant and approved in writing by Landlord in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper to open such doors in an emergency to obtain entry to the Premises. Any entry to the Premises obtained by Landlord by any of such means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

ARTICLE 18
Events of Default

18.1 The occurrence of any one or more of the following events (“Event of Default”) shall constitute a breach of this Lease by Tenant:

(a) Tenant fails to pay any monthly rent (i.e., monthly installments of Base Rent and monthly installments of Landlord’s estimates of amounts payable under sections 3.1(b) and 3.1(c) hereof) as and when such monthly rent becomes due and payable and such failure continues for more than five (5) Business Days; or

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(b) Tenant fails to pay any additional rent or other amount of money or charge payable by Tenant hereunder as and when such additional rent or amount or charge becomes due and payable and such failure continues for more than ten (10) days after Landlord gives written notice thereof to Tenant; provided, however, that after the second such failure in a calendar year, only the passage of time, but no further notice, shall be required to establish an Event of Default in the same calendar year; or

(c) Tenant fails to perform or observe any agreement, covenant or condition according to the provisions of Articles 6, 9, 15, 22 or 25 of this Lease as and when performance or observance is due and such failure continues for more than three (3) Business Days after Landlord gives written notice thereof to Tenant; or

(d) Tenant fails to perform or observe any other agreement, covenant or condition of this Lease to be performed or observed by Tenant as and when performance or observance is due and such failure continues for more than ten (10) days after Landlord gives written notice thereof to Tenant; provided, however, that if, by the nature of such agreement, covenant or condition, such failure cannot reasonably be cured within such period of ten (10) days, an Event of Default shall not exist as long as Tenant commences with due diligence and dispatch the curing of such failure within such period of ten (10) days and, having so commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such failure within a reasonable time; or

(e) Tenant (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Tenant or of any substantial part of Tenant’s property, or (v) takes action for the purpose of any of the foregoing; or

(f) A court or governmental authority of competent jurisdiction enters an order appointing, without consent by Tenant, a custodian, receiver, trustee or other officer with similar powers with respect to Tenant or with respect to any substantial part of Tenant’s property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of Tenant, or if any such petition is filed against Tenant and such petition is not dismissed within sixty (60) days; or

(g) This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within thirty (30) days; or

(h) Tenant abandons the Premises.
ARTICLE 19

Remedies Upon Default

19.1 Landlord shall have the remedy described in California Civil Code section 1951.2. If an Event of Default occurs, Landlord at any time thereafter shall have the right to give a written termination notice to Tenant (which may be included in a single notice given by Landlord under section 18.1 hereof) and on the date specified in such notice, Tenant’s right to possession shall terminate and this Lease shall terminate. Upon such termination, Landlord shall have the right to recover from Tenant:

(a) The worth at the time of award of all unpaid rent which had been earned at the time of termination;

(b) The worth at the time of award of the amount by which all unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which all unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(d) All other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant’s failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

The “worth at the time of award” of the amounts referred to in clauses (a) and (b) above shall be computed by allowing interest at the Interest Rate (as defined in section 31.2 below). The “worth at the time of award” of the amount referred to in clause (c) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). For the purpose of determining unpaid rent under clauses (a), (b) and (c) above, the rent reserved in this Lease shall be deemed to be all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others.

19.2 Landlord shall have the remedy described in California Civil Code section 1951.4 (lessor may continue lease in effect after lessee’s breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, even though Tenant has breached this Lease and an Event of Default has occurred, this Lease shall continue in effect for so long as Landlord does not terminate Tenant’s right to possession, and Landlord shall have the right to enforce all its rights and remedies under this Lease, including the right to recover all rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord’s interest under this Lease shall not constitute a termination of Tenant’s right to possession unless written notice of termination is given by Landlord to Tenant.
19.3 The remedies provided for in this Lease are in addition to all other remedies available to Landlord at law or in equity by statute or otherwise. Tenant hereby waives, for Tenant and for all those claiming under Tenant, any and all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant’s right of occupancy of the Premises after any termination of this Lease.

19.4 If Landlord defaults under this Lease, Tenant shall give written notice to Landlord specifying such default with particularity, and Landlord shall have thirty (30) days after receipt of such notice within which to cure such default; provided, however, that if such default cannot reasonably be cured within such period of thirty (30) days, a default by Landlord shall not exist as long as Landlord commences with due diligence and dispatch the curing of such default within such period of thirty (30) days and, having so commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such default within a reasonable time. In the event of any default by Landlord, Tenant’s exclusive remedy shall be an action for damages. Notwithstanding any other provision of this Lease, neither Landlord nor any of the other Landlord Parties shall have any personal liability under this Lease. In the event of any default by Landlord under this Lease, Tenant agrees to look solely to the equity or interest then owned by Landlord in the Project, and in no event shall any deficiency judgment or personal money judgment of any kind be sought or obtained against Landlord or any of the other Landlord Parties.

ARTICLE 20
Landlord’s Right to Cure Defaults

20.1 All agreements to be performed by Tenant under this Lease shall be at Tenant’s sole cost and expense and without any abatement of rent. If Tenant fails to pay any sum of money required to be paid by Tenant hereunder or fails to perform any other act on Tenant’s part to be performed hereunder, Landlord shall have the right, without waiving or releasing Tenant from any obligations of Tenant, but shall not be obligated, to make any such payment or to perform any such other act on behalf of Tenant in accordance with this Lease. All sums so paid by Landlord and all necessary incidental costs shall be deemed additional rent hereunder and shall be payable by Tenant to Landlord on demand, together with interest on all such sums from the date of expenditure by Landlord to the date of repayment by Tenant at the Interest Rate. Landlord shall have, in addition to all other rights and remedies of Landlord, the same rights and remedies in the event of the nonpayment of such sums plus interest by Tenant as in the case of default by Tenant in the payment of rent.

ARTICLE 21
Eminent Domain

21.1 If a material part of the Premises is taken for a period in excess of one hundred eighty (180) days by exercise of the power of eminent domain before the Commencement Date or during the Lease Term, Landlord and Tenant each shall have the right, by giving written notice to the other within thirty (30) days after the date of such taking, to terminate this Lease. If either Landlord or Tenant exercises such right to terminate this Lease in accordance with this section 21.1, this Lease shall terminate as of the date of such taking. If neither Landlord nor Tenant exercises such right to
terminate this Lease in accordance with this section 21.1, or if less than a material part of the Premises is so taken, this Lease shall terminate as to the portion of the Premises so taken as of the date of such taking and shall remain in full force and effect as to the portion of the Premises not so taken, and the Base Rent and amounts payable under sections 3.1(b) and 3.1(c) hereof shall be reduced as of the date of such taking in the proportion that the usable area of the Premises so taken bears to the total usable area of the Premises. If all of the Premises is taken by exercise of the power of eminent domain before the Commencement Date or during the Lease Term, this Lease shall terminate as of the date of such taking.

21.2 If all or any part of the Premises is taken by exercise of the power of eminent domain, all awards, compensation, damages, income, rent and interest payable in connection with such taking shall, except as expressly set forth in this section 21.2, be paid to and become the property of Landlord, and Tenant hereby assigns to Landlord all of the foregoing. Without limiting the generality of the foregoing, Tenant shall have no claim against Landlord or the entity exercising the power of eminent domain for the value of the leasehold estate created by this Lease or any unexpired Lease Term. Tenant shall have the right to claim and receive directly from the entity exercising the power of eminent domain only the share of any award determined to be owing to Tenant for the taking of improvements installed in the portion of the Premises so taken by Tenant at Tenant’s sole cost and expense based on the unamortized cost paid by Tenant for such improvements, for the taking of Tenant’s movable furniture, equipment, trade fixtures and personal property, for loss of goodwill, for interference with or interruption of Tenant’s business, or for removal and relocation expenses, but only if such share does not reduce the amount otherwise payable to Landlord.

21.3 Notwithstanding anything to the contrary contained in this Article 21, in the event of a temporary taking of all or any portion of the Premises for a period of one hundred and eighty (180) days or less, then this Lease shall not terminate but the Base Rent and amounts payable under sections 3.1(b) and 3.1(c) hereof shall be abated for the period of such taking in proportion to the ratio that the amount of rentable square feet of the Premises taken bears to the total rentable square feet of the Premises. Landlord shall be entitled to receive the entire award made in connection with any such temporary taking.

21.4 As used in this Article 21, a “taking” means the acquisition of all or part of the Premises for a public use by exercise of the power of eminent domain and the taking shall be considered to occur as of the earlier of the date on which possession of the Premises (or part so taken) by the entity exercising the power of eminent domain is authorized as stated in an order for possession or the date on which title to the Premises (or part so taken) vests in the entity exercising the power of eminent domain. Tenant hereby waives any and all rights it might otherwise have pursuant to section 1265.130 of the California Code of Civil Procedure.
ARTICLE 22
Subordination to Mortgages

22.1 This Lease shall be subject and subordinate at all times to the lien of all mortgages and deeds of trust securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Building or on or against Landlord’s interest or estate therein, all without the necessity of having further instruments executed by Tenant to effect such subordination. Notwithstanding the foregoing, in the event of a foreclosure of any such mortgage or deed of trust or of any other action or proceeding for the enforcement thereof, or of any sale thereunder, this Lease shall not be terminated or extinguished, nor shall the rights and possession of Tenant hereunder be disturbed, if no Event of Default exists under this Lease, and Tenant shall attorn to the person who acquires Landlord’s interest hereunder through any such mortgage or deed of trust. Tenant agrees to execute, acknowledge and deliver upon demand such further instruments evidencing such subordination of this Lease to the lien of all such mortgages and deeds of trust as may reasonably be required by Landlord. Tenant hereby acknowledges that, after the date hereof, Landlord may obtain secured financing for the Building secured by a mortgage or deed of trust. If any lender secured or to be secured by a mortgage or deed of trust should require, as a condition to such financing, either execution by Tenant of an agreement requiring Tenant to send such lender written notice of any default by Landlord under this Lease, giving such lender the right to cure such default until such lender has completed foreclosure and preventing Tenant from terminating this Lease unless such default remains uncured after foreclosure has been completed, or any modification of the agreements, covenants or conditions of this Lease, or both of them, then Tenant agrees to execute and deliver such agreement or modification as required by such lender within ten (10) days after receipt thereof; provided, however, that no such modification shall affect the length of the Lease Term or increase the rent payable by Tenant under Article 3 hereof.

ARTICLE 23
Surrender of Premises; Ownership and Removal of Trade Fixtures

23.1 No act or thing done by Landlord or any agent or employee of Landlord during the Lease Term shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in writing by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises or terminate any or all such subtenants or subtenancies.

23.2 Upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 23 and section 8.2 above, quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession, ordinary wear and tear and damage thereto by fire or other casualty excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions, voice and data cabling and other
articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed; provided, however, that in lieu of removing certain cabling, Tenant shall, at Landlord’s request, abandon and leave in place, without additional payment to Tenant or credit against rent, any cabling (including conduit) designated by Landlord and installed in the Premises or elsewhere in the Project by or on behalf of Tenant (including all connections for such cabling), in a neat and safe condition in accordance with the requirements of all applicable Legal Requirements, including the National Electric Code or any successor statute, and terminated at both ends of a connector, properly labeled at each end and in each electrical closet and junction box. Any such property not so removed by Tenant shall be deemed to be abandoned and at the option of Landlord shall either (a) become Landlord’s property without any payment to Tenant or (b) remain Tenant’s property, but Landlord shall have the right to sell or otherwise dispose of such personal property in any commercially reasonable manner, provided that any proceeds realized from the sale of Tenant’s property shall be applied first to offset all expenses of storage and sale, then credited against Tenant’s outstanding obligations under this Lease (including, without limitation, past due rent amounts and any termination damages owing by Tenant to Landlord pursuant to Article 19 hereof), and any remaining balance shall be returned to Tenant.

ARTICLE 24

Sale

24.1 If the original Landlord hereunder, or any successor owner of the Building, sells or conveys the Building, all liabilities and obligations on the part of the original Landlord, or such successor owner, under this Lease accruing after such sale or conveyance shall terminate and the original Landlord, or such successor owner, shall automatically be released therefrom, and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant agrees to attorn to such new owner. All liabilities and obligations on the part of the original Landlord or such successor owner that accrued before the sale or conveyance shall remain the responsibility of the original Landlord or such successor owner. This Article 24 shall survive termination of the Lease.

ARTICLE 25

Estoppel Certificate

25.1 At any time and from time to time, Tenant shall, within ten (10) Business Days after written request by Landlord, execute, acknowledge and deliver to Landlord a certificate certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the date and nature of each modification); (b) the Commencement Date and the Expiration Date determined in accordance with Article 2 hereof and the date, if any, to which all rent and other sums payable hereunder have been paid; (c) that no notice has been received by Tenant of any default by Tenant hereunder which has not been cured, except as to defaults specified in such certificate; (d) that Landlord is not in default hereunder, except as to defaults specified in such certificate; and (e) such other matters as may be reasonably requested by Landlord or any actual or prospective purchaser or mortgagee or beneficiary under any deed of trust of the Building or any part thereof.
ARTICLE 26

Holding Over

26.1 Any holding over after the expiration or other termination of the Lease Term without the express written consent of Landlord delivered to Tenant shall be construed to be a tenancy at sufferance. Any holding over after the expiration or other termination of the Lease Term with the express written consent of Landlord delivered to Tenant shall be construed to be a tenancy from month to month only, and shall be on all the terms set forth herein, except that the monthly Base Rent shall be an amount equal to the greater of: (a) one hundred fifty percent (150%) of the then current fair market monthly rental value for the Premises as reasonably determined by Landlord, or (b) one hundred fifty percent (150%) of the monthly Base Rent payable for the last full month of the term (without giving consideration to any period of abatement arising as a result of the occurrence of any casualty or for any other reason). Acceptance by Landlord of any rent after the expiration or termination of this Lease shall not constitute a consent by Landlord to any such tenancy from month to month or result in any other tenancy or any renewal of the term hereof. The provisions of this section are in addition to, and do not affect, Landlord’s right to re-entry or other rights hereunder or provided by law. Tenant shall indemnify, defend and hold Landlord harmless from and against all claims, demands, liabilities, damages, losses, costs and expenses, including, without limitation, attorneys’ fees, incurred by or asserted against Landlord and arising directly or indirectly from Tenant’s failure to timely surrender the Premises, including but not limited to (i) any rent payable by or any loss, cost, or damages, including lost profits, claimed by any prospective tenant of the Premises or any portion thereof, and (ii) Landlord’s damages as a result of such prospective tenant rescinding or refusing to enter into the prospective lease of the Premises or any portion thereof by reason of such failure to timely surrender the Premises.

ARTICLE 27

Letter of Credit

27.1 Upon signing this Lease, Tenant shall cause to be delivered to Landlord an original irrevocable standby letter of credit (the “Letter of Credit”) in the amount specified in the Basic Lease Information (the “Letter of Credit Amount”), naming Landlord as beneficiary, which Landlord may draw upon, without prejudice to any other remedy provided in the Lease or by applicable law, to the extent necessary to satisfy past due rent or to satisfy any other loss or damage resulting from Tenant’s breach under the Lease. Any such draw on the Letter of Credit shall not constitute a waiver of any other rights of Landlord with respect to such default or failure to perform. The Letter of Credit shall be issued by a major commercial bank with a San Francisco, California service and claim point for the Letter of Credit, whose deposits are insured by the FDIC, and who shall be reasonably acceptable to Landlord (such approved, issuing bank being referred to herein as the “Bank”), which Bank must have a short term Fitch Rating which is not less than “F2”, a long term Fitch Rating which is not less than “BBB”, a short term rating from Standard and Poor’s Financial Services, LLC (“S&P”) of not less than “A2”, a long term S&P rating of not less than “BBB” a short

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term rating from Moody’s Investors Service, Inc. ("Moody’s") of not less than “P2”, and a long term Moody’s rating of not less than “Baa3” (collectively, the “Bank’s Credit Rating Threshold”). The Letter of Credit shall have an expiration date not earlier than the sixtieth (60th) day after the Expiration Date (or, in the alternative, have a term of not less than one (1) year and be automatically renewable for an additional one (1) year period unless notice of non-renewal is given by the issuer to Landlord not later than sixty (60) days prior to the expiration thereof) and shall provide that Landlord may make partial and multiple draws thereunder, up to the face amount thereof. In addition, the Letter of Credit shall provide that, in the event of Landlord’s assignment or other transfer of its interest in this Lease, the Letter of Credit shall be freely transferable by Landlord, without charge and without recourse, to the assignee or transferee of such interest and the bank shall confirm the same to Landlord and such assignee or transferee. The Letter of Credit shall provide for payment to Landlord upon the issuer’s receipt of a sight draft from Landlord together with Landlord’s certificate certifying that Landlord is entitled to such payment pursuant to the provisions of this Lease, and with no other conditions, shall be in the form attached hereto as Exhibit D, and otherwise be in form and content satisfactory to Landlord. If the Letter of Credit has an expiration date earlier than the Expiration Date, then throughout the term hereof (including any renewal or extension of the term) Tenant shall provide evidence of renewal of the Letter of Credit to Landlord at least sixty (60) days prior to the date the Letter of Credit expires. If Landlord draws on the Letter of Credit pursuant to the terms hereof, Tenant shall immediately replenish the Letter of Credit or provide Landlord with an additional letter of credit conforming to the requirement of this paragraph so that the amount available to Landlord from the Letter of Credit(s) provided hereunder is the Letter of Credit Amount. In addition to the other reasons set forth herein entitling Landlord to draw down on the Letter of Credit, Landlord, or its then managing agent, shall also have the right to draw down an amount up to the face amount of the Letter of Credit if the applicable rating of the Bank has been reduced below the Bank’s Credit Rating Threshold, and Tenant has failed to provide Landlord with a replacement letter of credit, conforming in all respects to the requirements of this section 27.1 (including, but not limited to, the requirements placed on the issuing Bank more particularly set forth above), in the Letter of Credit Amount, within twenty-five (25) days following Landlord’s written demand therefor (with no other notice or cure or grace period being applicable thereto, notwithstanding anything in this Lease to the contrary). In addition, in the event the Bank is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation or any successor or similar entity, then, effective as of the date such receivership or conservatorship occurs, said Letter of Credit shall be deemed to fail to meet the requirements of this section 27.1, and, within twenty-five (25) days following Landlord’s notice to Tenant of such receivership or conservatorship, Tenant shall replace such Letter of Credit with a substitute letter of credit from a different issuer (which issuer shall meet or exceed the Bank’s Credit Rating Threshold) and that complies in all respects with the requirements of this section 27.1. Tenant’s failure to deliver any replacement, additional or extension of the Letter of Credit, or evidence of renewal of the Letter of Credit, within the time specified under this Lease shall entitle Landlord to draw upon the Letter of Credit then in effect and, at Landlord’s election, constitute an Event of Default under this Lease. If Landlord liquidates the Letter of Credit as provided in the preceding sentence, Landlord shall hold the funds received from the Letter of Credit as security for Tenant’s performance under this Lease, and Landlord shall not be required to segregate such security deposit from its other funds and no interest shall accrue or be payable to Tenant with respect thereto. No purchaser at any judicial or private
foreclosure sale of the Building or any portion thereof, shall be responsible to Tenant for such security deposit unless and only to the extent such
holder or purchaser shall have actually received the same. If Tenant is not in default at the expiration or termination of this Lease, Landlord shall return
to Tenant the Letter of Credit or the balance of the security deposit then held by Landlord, as applicable; provided, however, that in no event shall any
such return be construed as an admission by Landlord that Tenant has performed all of its covenants and obligations hereunder. Tenant hereby
unconditionally and irrevocably waives the benefits and protections of California Civil Code Section 1950.7, and, without limitation of the scope of
such waiver, acknowledges that Landlord may use all or any part of the Letter of Credit or the proceeds thereof to compensate Landlord for damages
resulting from termination of this Lease and the tenancy created hereunder (including, without limitation, damages recoverable under California Civil
Code Section 1951.2).

ARTICLE 28

Signage

28.1 Tenant may, at Tenant’s expense, install a sign identifying Tenant’s business at the entrance to the Premises, provided that the design, size,
color and location of the sign shall be subject to Landlord’s prior reasonable approval. Tenant shall be entitled, at no cost to Tenant, to have the name
of Tenant’s company listed on the Building directory situated in the lobby of the Building. If, after Tenant’s name is initially listed on the directories,
Tenant requests a change in Tenant’s name as printed thereon, Tenant shall reimburse Landlord for Landlord’s cost of reprinting Tenant’s name for the
directories.

28.2 Tenant shall be entitled to one (1) Building standard sign on the Building monument sign installed by Landlord identifying Tenant’s
business, in a location as designated by Landlord. Any such Tenant signage shall comply with the requirements of this Article 28 and otherwise the
design, size, color, content and location of the signs shall be in accordance with the Building’s signage criteria and subject to Landlord’s prior
reasonable approval. Tenant shall provide Landlord with Tenant’s signage to install on such monument at Tenant’s sole cost; provided, however, that
Landlord shall install such signage at Tenant’s cost. If, after Tenant’s name is initially listed on the monument sign, Tenant requests a change in
Tenant’s name as printed thereon, Tenant shall reimburse Landlord for Landlord’s cost of reprinting Tenant’s name for the monument sign.

ARTICLE 29

Waiver

29.1 The waiver by Landlord or Tenant of any breach of any agreement, covenant or condition in this Lease shall not be deemed to be a waiver of
any subsequent breach of the same or any other agreement, covenant or condition in this Lease, nor shall any custom or practice which may grow up
between Landlord and Tenant in the administration of this Lease be construed to waive or to lessen the right of Landlord or Tenant to insist upon the
performance by Landlord or Tenant in strict accordance with this Lease. The subsequent acceptance of rent hereunder by Landlord or the payment of
rent by Tenant shall not waive any preceding breach by Tenant of any agreement, covenant or condition in this Lease, nor cure any Event of Default,
nor waive any forfeiture of this Lease or unlawful detainer action, other than the failure of Tenant to pay the particular rent so accepted, regardless of
Landlord’s or Tenant’s knowledge of such preceding breach at the time of acceptance or payment of such rent.

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ARTICLE 30
Notices

30.1 All notices that may be given or are required to be given by either Landlord or Tenant to the other under this Lease shall be in writing and shall be either hand delivered, delivered by a nationally recognized overnight courier, or deposited in the United States mail, postage prepay, certified mail with return receipt requested, and addressed as follows: to Tenant, before the Commencement Date, at the address of Tenant specified in the Basic Lease Information, or at such other place as Tenant may from time to time designate in a notice to Landlord, and, after the Commencement Date, to Tenant at the Premises, or at such other place as Tenant may from time to time designate in a notice to Landlord; to Landlord at the address of Landlord specified in the Basic Lease Information, or at such other place as Landlord may from time to time designate in a notice to Tenant. All notices shall be effective on the date of delivery. If any notice is not delivered or cannot be delivered because the receiving party changed the address of the receiving party and did not previously give notice of such change to the sending party, or due to a refusal to accept the notice by the receiving party, such notice shall be effective on the date delivery is attempted. Any notice under this Lease may be given on behalf of a party by the attorney for such party.

ARTICLE 31
Miscellaneous

31.1 The words “Landlord” and “Tenant” as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several. Time is of the essence of this Lease and each and all of its provisions. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant. Subject to Article 15 hereof, this Lease shall benefit and bind Landlord and Tenant and the personal representatives, heirs, successors and assigns of Landlord and Tenant. Unless required by a lender pursuant to section 22.1, neither this Lease nor any memorandum, short form, affidavit or other writing with respect thereto, shall be recorded by Tenant or anyone acting through, under or on behalf of Tenant. Tenant shall not, without the prior written consent of Landlord, use the name of the Project or the Building for any purpose other than as the address of the business to be conducted by Tenant in the Premises. If any provision of this Lease is determined to be illegal or unenforceable, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord’s expense or to any setoff of the rent or other amounts owing hereunder against Landlord. If Tenant requests the consent or approval of Landlord

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31.2 Tenant acknowledges that the late payment by Tenant of any monthly installment of Base Rent or additional monthly rent will cause Landlord to incur costs and expenses, the exact amount of which is extremely difficult and impractical to fix. Such costs and expenses will include, without limitation, administration and collection costs and processing and accounting expenses. Therefore, if any monthly installment of Base Rent or additional monthly rent is not received by Landlord from Tenant within five (5) Business Days after such installment is due, Tenant shall immediately pay to Landlord a late charge equal to five percent (5%) of such delinquent installment. Landlord and Tenant agree that such late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for its loss suffered by Tenant’s failure to make timely payment. In no event shall such late charge be deemed to grant to Tenant a grace period or extension of time within which to pay any monthly rent or prevent Landlord from exercising any right or remedy available to Landlord upon Tenant’s failure to pay each installment of monthly rent due under this Lease in a timely fashion, including the right to terminate this Lease. All amounts of money payable by Tenant to Landlord hereunder, if not paid when due, shall bear interest from the due date until paid at the rate (the “Interest Rate”) equal to ten percent (10%) per annum.

31.3 If there is any legal action or proceeding between Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either Landlord or Tenant hereunder, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys’ fees, incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys’ fees shall be included in and as a part of such judgment. Notwithstanding the foregoing, however, Landlord shall be deemed the prevailing party in any unlawful detainer or other action or proceeding instituted by Landlord based upon any default or alleged default of Tenant hereunder if (a) judgment is entered in favor of Landlord, or (b) prior to trial or judgment Tenant pays all or any portion of the rent claimed by Landlord, vacates the Premises, or otherwise cures the default claimed by Landlord.

31.4 Exhibit A (Plan Outlining the Premises), Exhibit B (Approved Plans) and Exhibit C (Rules and Regulations) and any other attachments specified in the Basic Lease Information are attached to and made a part of this Lease. Landlord and Tenant agree that the rentable area of the Premises as calculated as of the date of this Lease is accurately set forth in the Basic Lease Information.

31.5 Landlord and Tenant each hereby expressly, irrevocably, fully and forever releases, waives and relinquishes any and all right to trial by jury and any and all right to receive punitive, exemplary and consequential damages from the other (or any past, present or future board member, trustee, director, officer, employee, agent, representative, or advisor of the other) in any claim, demand, action, suit, proceeding or cause of action in which Landlord and Tenant are parties, which
in any way (directly or indirectly) arises out of, results from or relates to any of the following, in each case whether now existing or hereafter arising and whether based on contract or tort or any other legal basis: This Lease; any past, present or future act, omission, conduct or activity with respect to this Lease; any transaction, event or occurrence contemplated by this Lease; the performance of any obligation or the exercise of any right under this Lease; or the enforcement of this Lease. Landlord and Tenant reserve the right to recover actual or compensatory damages, with interest, attorneys’ fees, costs and expenses as provided in this Lease, for any breach of this Lease.

31.6 Landlord reserves the right (upon thirty (30) days’ prior notice to, but otherwise without the consent of Tenant) to make improvements and/or additions to portions of the Building, including, without limitation, adding floor area to one or more existing floors of the Building, and to undertake structural and seismic improvement projects in the Project. Such construction activity may result in columns, beams and other structural components being placed in the Premises to accommodate the construction work and/or the permanent additions and/or expansions to be constructed. Any such construction activity is entirely discretionary with Landlord, and Tenant agrees that no representation, express or implied, with respect to the future condition of the Building or the Project or any improvements thereto have been made to Tenant by Landlord or any Landlord representative. Tenant hereby waives any and all rights or claims of any kind for rent offsets or based on constructive eviction, nuisance, or interference with enjoyment which may arise in connection with or result from such construction activities; provided, however, Landlord shall use commercially reasonable efforts to minimize disruption of Tenant’s business caused by such construction activities. If the Premises are altered by reason of such improvements, Landlord agrees to re-measure the Premises following the completion of the improvements and to adjust Tenant’s rental obligations hereunder based on the new square footage of the Premises, as determined by Landlord.

31.7 Within sixty (60) days following June 30 and December 31 of each calendar year, Tenant shall furnish to Landlord copies of true and accurate copies of Tenant’s internally prepared financial statements for such calendar year reflecting Tenant’s then current financial situation. In addition, at any time within fifteen (15) days after Landlord’s request therefor (but in no event more than once per calendar year), Tenant shall furnish to Landlord copies of true and accurate copies of Tenant’s most recent internally prepared financial statements reflecting Tenant’s then current financial situation. In the event that Tenant begins utilizing an outside accountant and/or preparing audited financial statements, then the financial statements required by this section 31.7 shall be the financial statements prepared by such outside accountant and, if applicable, on an audited basis. All financial statements provided to Landlord shall be prepared in accordance with GAAP and certified by a responsible officer of Tenant as presenting fairly in all material respects the financial condition and results of operations of Tenant. Landlord shall use good faith efforts to keep such information received from Tenant confidential, except that Landlord may disclose such financial information received from Tenant to any lender or prospective lender for, or purchaser or prospective purchaser of, the Building, as necessary in the course of any litigation arising out of or concerning this Lease, or as required by applicable law, and provided however that the foregoing confidentiality requirement shall be inapplicable in the event the subject financial information is made publicly available by the Securities and Exchange Commission or any other governmental body. “GAAP”
means those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the date hereof, so as to properly reflect the financial position of Tenant, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

31.8 Notwithstanding any other provision of this Lease, the liability of Landlord for its obligations under this Lease is limited solely to Landlord’s interest in the Project as the same may from time to time be encumbered, and no personal liability shall at any time be asserted or enforceable against any other assets of Landlord or against the constituent shareholders, partners or other owners of Landlord, or the directors, officers, employees and agents of Landlord or such constituent shareholder, partner or other owner, on account of any of Landlord’s obligations or actions under this Lease.

31.9 Tenant agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord, and that disclosure of the terms hereof could adversely affect the ability of Landlord to negotiate with other tenants. Tenant hereby agrees that Tenant and its partners, officers, directors, employees, agents, real estate brokers and sales persons and attorneys shall not disclose the terms of this Lease to any other person without Landlord’s prior written consent, except to any accountants of Tenant in connection with the preparation of Tenant’s financial statements or tax returns, to an assignee of this Lease or sublessee of the Premises, or to an entity or person to whom disclosure is required by applicable law or in connection with any action brought to enforce this Lease.

31.10 The square footage figures contained in this Lease shall be final and binding on the parties. Landlord reserves the right to periodically remeasure the Project, the Building and/or the Premises in accordance with generally accepted industry standards, which may result in an increase or decrease in the number of rentable square feet contained therein, provided that such remeasurement shall not under any circumstances result in an increase or decrease in the Base Rent payable by Tenant hereunder. In the event of such an adjustment in the rentable square footage, Tenant’s Percentage Share shall be adjusted accordingly. Subject to the foregoing, the square footage figures contained in this Lease are final and binding on the parties.

ARTICLE 32
Real Estate Brokers

32.1 Tenant warrants and represents that it has negotiated this Lease directly with the real estate brokers specified in the Basic Lease Information and has not authorized or employed, or acted by implication to authorize or to employ, any other real estate broker or salesperson to act for Tenant in connection with this Lease. Tenant shall indemnify and defend Landlord against and hold Landlord harmless from all claims, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable attorneys’ fees, arising from any claim for any compensation, commission or finder’s fee by any real estate broker or salesperson actually or allegedly representing or acting on behalf of Tenant other than those specified in this Article 32.
ARTICLE 33
Authority

33.1 If Tenant is a corporation, partnership, limited liability company, trust, association or other entity, Tenant and each person executing this Lease on behalf of Tenant, hereby covenants and warrants that (a) Tenant is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (b) Tenant has and is duly qualified to do business in the State of California, (c) Tenant has full corporate, partnership, trust, association or other appropriate power and authority to enter into this Lease and to perform all Tenant’s obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this Lease on behalf of Tenant is duly and validly authorized to do so. Concurrently with signing this Lease, Tenant shall deliver to Landlord a true and correct copy of resolutions duly adopted by the board of directors or other governing body of Tenant, certified by the secretary or assistant secretary of Tenant to be true and correct, unmodified and in full force, which authorize and approve this Lease and authorize each person signing this Lease on behalf of Tenant to do so.

ARTICLE 34
Complete Agreement

34.1 There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, offers, agreements and understandings, oral or written, if any, between Landlord and Tenant or displayed by Landlord to Tenant with respect to the subject matter of this Lease, the Premises, the Building or the Project. There are no representations between Landlord and Tenant or between any real estate broker and Tenant other than those expressly set forth in this Lease and all reliance with respect to any representations is solely upon representations expressly set forth in this Lease. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Landlord and Tenant.
IN WITNESS WHEREOF, Landlord and Tenant have executed this Office Lease as of the date first hereinabove written.

TENANT:  
LIVONGO HEALTH, INC., a Delaware corporation  
By /s/ Glen Tullman  
Name Glen Tullman  
Title CEO Livongo Health

LANDLORD:  
SFF CASTRO STATION, LLC,  
a California limited liability company,  
By SFF Realty Fund, L.P.,  
a Delaware limited partnership  
its Manager  
By PSAI Realty Partners, LLC,  
a Delaware limited liability company  
its General Partner  
By /s/ Erik A. Foraker  
Name Erik A. Foraker  
Title Managing Director
EXHIBIT A

Plan Outlining the Premises

EXHIBIT A

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EXHIBIT B
Approved Plans

Workstations Option A
EXHIBIT C
Rules and Regulations

1. No sign, placard, picture, advertisement, name or notice shall be installed, inscribed, exhibited, painted, affixed or displayed on the Premises or on any part of the outside or inside of the Building without the prior written consent of Landlord. Tenant shall be allowed to install signs on the interior of the Premises. Landlord shall adopt and furnish to Tenant reasonable general guidelines for the display of signs in the Project. Tenant shall comply with such guidelines, but may request the consent of Landlord to modifications to such guidelines or to exceptions thereto, which consent shall not be unreasonably withheld or delayed. All approved signs or lettering on doors shall be inscribed, painted, affixed or otherwise displayed at the expense of Tenant by a person approved by Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall have the right, without liability, to remove, at Tenant’s expense and without notice, any sign installed or displayed in violation of this rule.

2. Unless Tenant has obtained Landlord’s prior written consent, Tenant shall not use the name of the Building or the Project in connection with or in promoting or advertising the business of Tenant except as part of Tenant’s address. Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord’s opinion, tends to impair the reputation of the Building or the Project, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.

3. No curtains, blinds, shades, screens or hanging plants or other similar objects attached to or used in connection with any window or door of the Premises shall be permitted except for Building standard vertical or horizontal blinds furnished by Landlord. No awning shall be permitted on any part of the Premises. The sashes, sash doors, windows, glass lights and any lights or skylights that reflect or admit light into the halls or other places of the Building shall not be obstructed. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreened without Landlord’s prior written consent. Tenant shall not place anything against or near glass partitions or doors or windows which may appear unsightly from outside the Premises. Further, Tenant shall not be permitted to place anything on the Building’s balconies.

4. No furniture shall be placed in front of the Building or in any lobby or corridor without the prior written consent of Landlord. Landlord shall have the right to remove all of such unpermitted furniture, without notice to Tenant, and at Tenant’s expense.

5. All electric ceiling fixtures hung in offices or spaces along the perimeter of the Building must be fluorescent, of a quality, type, design and bulb color approved by Landlord.

6. Tenant shall not enter the mechanical rooms, air handler rooms, electrical closets, janitorial closets or go upon the roof of the Building without the prior written consent of Landlord.

EXHIBIT C
7. Landlord shall have the exclusive right to regulate the common areas of the Project. The halls, passages, exits, entrances, elevators and stairways of the Project are not for the general public, and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the judgment of Landlord, would be prejudicial to the safety, character, reputation and interests of the Project and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities.

8. Any damage caused by Tenant, its employees or agents to the public portions of the Project or to any portions used in common with other tenants or occupants shall be repaired at the sole cost and expense of Tenant, except to the extent such damage is covered by the proceeds of insurance purchased by Landlord as part of Operating Expenses.

9. Except as expressly provided in the Lease, all janitorial, maintenance and similar services for the Project and the Premises shall be provided exclusively through Landlord. Unless the prior written consent of Landlord is obtained, which consent will not be unreasonably withheld or delayed, no person or persons (other than those approved by Landlord and except employees of Tenant performing incidental cleaning work during business hours) shall be employed by Tenant or permitted to enter the Building for the purpose of providing janitorial, maintenance or similar services. Tenant shall not cause Landlord to provide additional janitorial labor or maintenance services by reason of Tenant’s carelessness or indifference to the good order and cleanliness of the Premises. Landlord shall not in any way be responsible to Tenant for any loss of property on the Premises, however, occurring, or for any damage to Tenant’s Property caused by any employee of Landlord, any janitor or any other person engaged in cleaning or maintaining the Premises. Any person employed by Tenant to do janitorial, maintenance or similar work with Landlord’s consent shall, while in the Project, be subject to and under the control and direction of Landlord or its agent or representative (but shall not be an agent or servant of Landlord), and Tenant shall be responsible for all acts of such persons, except as may otherwise be set forth in this Lease.

10. Tenant shall not purchase or otherwise obtain for use in the Premises, water, ice, food, towel, barbering, bootblacking services or other like services, except from persons authorized in writing by Landlord to provide the foregoing, and at hours and under regulations fixed by Landlord, with the exception of food and drink purchased for immediate consumption by Tenant’s employees and visitors. Notwithstanding the above, Tenant shall have the right without prior written authorization to contract with “Sparkletts” or “Arrowhead” or similar providers for the delivery of ice, water or coffee for use in the Premises.

11. Landlord will furnish to Tenant identification keys or cards, each for the sum of Ten Dollars ($10.00). Each of such sums shall be a deposit against the return of such an identification key or card. Landlord may charge a reasonable amount for additional keys or cards. Tenant shall not make or have additional keys made, and Tenant shall not install a new or additional lock or bolt on any door or window of the Premises, nor make any changes to existing locks or the mechanisms thereof, without the prior written consent of Landlord, and Tenant shall furnish Landlord with a key for any such new, additional or altered lock. Tenant must, upon the termination of its tenancy, give Landlord the combination to all combination locks on safes, safe cabinets and vaults remaining on the Premises, and deliver to Landlord all identification keys or cards, if any, keys of stores, offices,
and toilet rooms, which keys or cards were either furnished to, or otherwise procured by Tenant. In the event of the loss of any card or key so furnished, Tenant shall pay to Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key or card if Landlord deems it necessary to make such change.

12. No deliveries shall be made which impede or interfere with other tenants or the operation of the Project. Tenant’s initial move-in, and subsequent deliveries of bulky items, such as furniture and safes, shall be made during such hours and in such manner as may be prescribed by Landlord from time to time. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building any bulky articles which violate any of these Rules and Regulations or provisions of the Lease. No safes or other objects which exceed the weight, size or other limits on the freight elevators of the Building shall be brought into or installed on the Premises. The Building’s freight elevators and loading platform shall be available for use by Tenant, subject to prior reservation and such reasonable scheduling as Landlord in its discretion shall deem appropriate. Prior to delivery of any heavy object to the Building, Tenant shall notify Landlord of such object’s specifications and contemplated location in order that Landlord may take action to prevent structural load damage to the Building. Landlord shall have the right to prescribe the weight and size of all equipment, materials, furniture or other property brought into the Building. Heavy objects shall, if considered necessary by Landlord, stand on such platforms (to be provided at Tenant’s expense) as determined by Landlord to be necessary to properly distribute the weight of such objects, but in no event shall Tenant place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by law. Landlord shall be responsible for all structural engineering required to determine structural load, the actual cost of which engineering Tenant shall reimburse to Landlord promptly after Landlord’s invoice therefor. Landlord reserves the right to prohibit or impose other conditions upon the installation in the Premises of heavy objects which might overload the floors of the Building. Landlord shall have the right to approve (but such approval shall not be unreasonably withheld or delayed) the movers or moving company employed by Tenant and Tenant shall cause such movers to use only the loading facilities and elevators designated by Landlord. If Tenant’s movers damage any of the elevators or any other part of the Project, Tenant shall pay to Landlord, upon demand, the amount required to repair such damage. Landlord shall have the right to require, and may supply, an elevator operator for the moving of bulky items by Tenant. Tenant shall pay to Landlord, upon demand, Landlord’s costs for such elevator operator.

13. The persons employed to move equipment, machines and similar items (other than those items described in Rule 12 above) in or out of the Project must be approved by Landlord. Landlord will not be responsible for loss of, or damage to, any such equipment or other items caused by the moving thereof, and all damage done to the Project by moving or maintaining such equipment or other items shall be repaired at the expense of Tenant.

14. Business machines and mechanical equipment belonging to Tenant, which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to Landlord or to any tenants in the Project, shall be placed and maintained by Tenant, at Tenant’s expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration.

EXHIBIT C
15. No explosives or firearms shall be brought into the Premises or other portion of the Project without the prior written consent of Landlord. Neither Tenant nor its servants, employees, agents, visitors or licensees shall at any time bring, use or keep in the Premises or in any other portion of the Project any kerosene, gasoline or inflammable or combustible fluid or material other than limited quantities thereof reasonably necessary for the operation or maintenance of office equipment or Tenant’s vehicles in the on-site parking facility. Tenant shall not do or permit anything to be done in the Premises, or bring or keep anything therein, which shall in any way violate or conflict with the regulations of the fire department, with any insurance policy on the Premises or the Project, or with any laws, rules, regulations or ordinances established by any governmental authority. Tenant shall not permit the smoking or carrying of lighted cigars or cigarettes in areas reasonably designated by Landlord or designated by applicable governmental agencies as non-smoking areas.

16. Except as Landlord may otherwise agree, Tenant shall not install any air conditioning or heating units or similar apparatus, nor use any method of heating or air conditioning other than that supplied by Landlord. Tenant shall (i) not waste electricity, water, air conditioning or other utilities supplied by Landlord, (ii) cooperate fully with Landlord to assure the most efficient operation of the Building’s heating and air conditioning systems and (iii) use its best efforts to comply with any governmental energy-saving laws, rules or regulations. Tenant shall cooperate with Landlord in obtaining maximum effectiveness of the cooling system by closing drapes and other window coverings when the sun’s rays fall on windows of the Premises.

17. At the end of each day, Tenant shall close and lock the doors, and shut off all water faucets, apparatus and other utilities located in the Premises so as to prevent waste or damage, and for any default or carelessness in this regard, Tenant shall be liable for all injuries and damage resulting therefrom. On multiple-tenancy floors, Tenant shall keep the doors to the Building corridors closed at all times and permit them to be opened only for purposes of ingress and egress. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery, pilferage and vandalism.

18. Landlord reserves the right to exclude from the Project on Sundays and legal holidays, holidays on which the New York Stock Exchange is closed, and on Mondays through Fridays other than between the hours of 8:00 A.M. and 6:00 P.M., and other than between such other hours as may be established from time to time by Landlord, any person unless that person is either known to the person or employee in charge of the Project and/or has a valid pass or is otherwise properly identified. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to Landlord for all acts of such persons. Landlord shall not be liable for damages caused by reason of any error with regard to the admission to or exclusion from the Project of any person. Landlord reserves the right to prevent access to the Project in case of invasion, mob, riot, public excitement, act of God or other commotion by closing and locking the doors or by other appropriate action. Landlord may exclude or expel from the Project any person who, in Landlord’s judgment, is
intoxicated or under the influence of liquor or drugs or is in violation of any of these Rules and Regulations (as amended and supplemented from time to time). If Tenant uses the Premises after regular business hours or on nonbusiness days, Tenant shall lock any entrance doors to the Premises used by Tenant immediately after using such doors.

19. The toilet rooms, toilets, urinals, wash bowls and other similar apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees, agents, visitors, licensees or invitees shall have caused the breakage, stoppage or damage.

20. Tenant shall not sell, or permit the sale of, newspapers, magazines, periodicals, theater tickets or any other goods or merchandise to the general public in or from the Premises without Landlord’s prior written consent, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, the business of stenography, typewriting or any similar business in or from the Premises for the service or accommodation of tenants or occupants of any other portion of the Project, nor shall the Premises be used by Tenant for manufacturing of any kind, or any business or activity other than that set forth in the Lease.

21. Tenant shall not commit any act or permit anything in or about the Project which is likely to subject Landlord to liability or responsibility for injury to any person or damage to any property.

22. Tenant shall store all its trash and garbage within the Premises. No material shall be placed in trash boxes or receptacles if such material is of such a nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the City in which the Project is located without being in violation of any law or ordinance governing such disposal. All garbage and refuse disposal shall be made only through entry ways and elevators provided for such purposes and at such times as Landlord shall designate.

23. Tenant shall not mark, paint, drill into, cut, string wires, except for telephone, computer and LAN cables, within or in any way deface any part of the Premises or any other portion of the Project, without the express prior written consent of Landlord, and as Landlord may direct. Any damage to the walls or floors of the Premises caused by the removal of any wall decorations or installations of floor coverings by Tenant shall be repaired by Tenant at Tenant’s sole cost and expense. Without limiting any of the provisions of the Lease, Tenant shall refer all representatives of contractors, installation technicians, janitorial workers and other mechanics, artisans and laborers rendering any service in connection with the repair, maintenance or improvement of the Premises to Landlord for Landlord’s supervision, approval and control before any of such persons commence performing any of the foregoing services. This paragraph shall apply to all Work performed in the Premises or any other portion of the Project, including, without limitation, the installation of telephones, telegraph equipment, electrical devices and attachments, and installations of any nature affecting the floors, walls, woodwork, trim, windows, ceilings, equipment or any other portion of the Project. The means by which telephone, telegraph and similar wires are to be introduced to the

EXHIBIT C
24. Tenant shall not lay linoleum or similar floor coverings so that the same shall come into direct contact with the floor of the Premises and, if linoleum or other similar floor covering is to be used, an interlining of builder’s deadening felt shall be first affixed to the floor, by a paste or other material soluble in water. The use of cement or other similar adhesive material is expressly prohibited. Tenant shall not, without the prior written consent of Landlord, alter or repair the ceiling, remove any ceiling tiles or remove or replace any lamps or ceiling fixtures on the Premises. Landlord shall replace, and Tenant shall pay for the replacement of, any broken ceiling tiles, or lamps, light bulbs or ceiling fixtures which are damaged by Tenant.

25. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Project nor shall Tenant install or maintain in the Premises any device or equipment which might interfere with the normal reception in the Project of radio or television transmissions.

26. No vending or coin-operated machines shall be placed by Tenant within the Premises without Landlord’s prior written consent, which shall not be unreasonably withheld or delayed.

27. The Premises shall not be used for the storage of merchandise held for sale to the general public, or for lodging, nor shall the Premises be used for any improper, immoral, illegal or objectionable purpose. Tenant shall not occupy or permit any portion of the Premises to be occupied for the manufacture or direct sale of liquor, narcotics or tobacco in any form, or as a medical office, barber shop, manicure shop, music or dance studio, travel agency or employment agency.

28. No cooking or food preparation shall be done or permitted by Tenant on the Premises, except Tenant’s employees may use Underwriters’ Laboratory-approved equipment for brewing coffee, tea, hot chocolate and similar beverages and for warming food, provided that such equipment and use thereof is in accordance with all applicable laws, codes, ordinances, rules and regulations. All such equipment and photocopy machines shall be turned off after regular business hours.

29. Tenant shall not engage or pay any employees on the Premises except those actually working for Tenant on the Premises nor advertise for laborers giving the address of the Premises.

30. Tenant shall not bring or keep within the Premises or Project any animals or birds. Bicycles, motorcycles and other vehicles shall be kept only in the parking facility or facilities designated by Landlord.

31. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

EXHIBIT C
32. Tenant shall not, without the prior written consent of Landlord, request the maintenance personnel of the Project to perform any tasks outside of their regular duties (unless under special instructions from Landlord to do so) for Tenant in or near the Premises or the Project.

33. Tenant shall not use in any area of the Project any hand truck or similar equipment unless it is equipped with rubber tires and side guards.

34. Tenant shall not make, or permit to be made, any unseemly or disturbing noises by the use of any musical instrument, radio, phonograph, nor shall Tenant otherwise disturb or interfere with occupants of the Project or neighboring buildings or premises. Neither Tenant nor its servants, employees, agents, visitors or licensees shall throw anything out of doors, windows or skylights or down public corridors.

35. Except as otherwise set forth in this Lease, Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises, whether voluntary, involuntary or pursuant to any assignment for the payment of creditors or pursuant to any bankruptcy or other insolvency proceedings.

36. If any governmental license or permit shall be required for the proper and lawful conduct of any business or other activity carried on by Tenant in the premises, or if Tenant’s failure to secure such license or permit would adversely affect Landlord, Tenant shall duly procure and thereafter maintain such license or permit.

37. Any consent, approval, request, agreement or other communication required or permitted to be given under these Rules and Regulations shall be given in accordance with the provisions for notices under the Lease.

38. These Rules and Regulations are in addition to, and shall not be construed to modify or amend, in whole or in part, the terms, covenants, agreements or conditions of the Lease.

39. Landlord may waive any one or more of these rules for the benefit of any tenant, but no such waiver by Landlord shall be construed as a waiver of such rule in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such rule against any or all of the tenants of the Project.

40. Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable Rules and Regulations as Landlord may from time to time deem necessary for the management, safety, care and cleanliness of the Premises, and Project, as well as for the convenience of other occupants and tenants therein. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition of its occupancy of the Premises.

41. Tenant shall be responsible for the observance of all of these Rules and Regulations (as amended and supplemented from time to time) by Tenant’s employees, agents, clients, customers, invitees and guests. Landlord shall not be liable to Tenant for the nonobservance or violation by any tenant or occupant of the Project, or any other person of any of these Rules and Regulations.

EXHIBIT C
COMERICA BANK HAS PREPARED THIS SPECIMEN UPON THE REQUEST AND BASED ON THE INFORMATION PROVIDED. NO REPRESENTATION AS TO THE ACCURACY OR WILLINGNESS FOR COMMITMENT IS MADE BY COMERICA BANK TO ISSUE THIS LETTER OF CREDIT IN THIS OR ANY OTHER FORM. WHEN SIGNED, THIS EXHIBIT A WILL BECOME AN INTEGRAL PART OF THE CORRESPONDING STANDBY LETTER OF CREDIT APPLICATION AND AGREEMENT.

APPROVED BY LIVONGO HEALTH, INC.

APPLICANT’S SIGNATURE ___________________________ DATE, ______________

Beneficiary:
SFF Castro Station, LLC
PSAI Realty Partners LLC
155 Montgomery St., suite 1600
San Francisco, CA 94104

Applicant:
Livongo Health, Inc.
444 N. Michigan Ave., suite 2880
Chicago, IL 60611

Specimen Date: December 16, 2014

Date and Place of Expiry:
January 31, 2016 office of Issuing Bank
or any automatically extended date, as herein defined.

Amount:
USD 178,922.00 One Hundred Seventy Eight Thousand Nine Hundred Twenty Two and 00/100 only

We hereby open our Irrevocable Standby Letter of Credit no. «Instrument ID» in your favor, for account of Livongo Health, Inc. for a sum not exceeding USD 178,922.00 (One Hundred Seventy Eight Thousand Nine Hundred Twenty Two and 00/100’s U.S. Dollars) available by your draft(s) at sight on Comerica Bank when accompanied by:

1. The original of this Irrevocable Standby Letter of Credit and Amendment(s) if any.
2. Beneficiary’s statement on its letterhead dated and signed by the Beneficiary, indicating name and title of the signer worded as follows:

A. The undersigned hereby certifies that the amount of USD (amount) is being drawn under Comerica Bank’s Standby Letter of Credit no. <Instrument ID>> as there has been an uncured default in accordance with the provision of that certain Lease Agreement dated (need date) that exists by and between Beneficiary (as Landlord) and Applicant (Tenant) (as such lease agreement has been or may be amended from time to time, the “Lease”).

or

B. The undersigned hereby certifies that we have received a written notice of Comerica Bank’s election not to extend their Standby Letter of Credit No. <Instrument ID>> and have not received a replacement Letter of credit from Tenant.

Special Conditions:

All signatures must be manually executed in originals.

All information required whether indicated by blanks, brackets or otherwise, must be completed at the time of drawing.

Partial drawings and multiple presentations may be made under this Irrevocable Standby Letter of Credit, provided, however, that each such demand that is paid by us shall reduce the amount available under this Irrevocable Standby Letter of Credit.

It is a condition of this Irrevocable Standby Letter of Credit that it shall be deemed automatically extended without amendment for a period of one year from the present or any future expiration date, unless at least sixty (60) days prior to the expiration date we send you notice by overnight courier that we elect not to extend this Irrevocable Standby Letter of Credit for any such additional period. Said notification will be sent to the address indicated above, unless a change of address is otherwise notified by you to us in writing by receipted mail or courier.

In no event, and without further notice from ourselves, will this letter of credit be extended beyond March 31, 2020 which shall be the final expiration date of this Letter of Credit.

This Letter of Credit may be transferred successively in its entirety only up to the then available amount in favor of a nominated Transferee (“Transferee”), assuming such transfer to such Transferee is in compliance with all applicable U.S. laws and regulations. At the time of transfer, the original Letter of Credit and original Amendment(s) if any, must be surrendered to us together with our Transfer Form (available upon request).

Notwithstanding any preprinted wording to the contrary on our standard transfer form, payment of all transfer fees is for the Applicant.
All drafts required under this Irrevocable Standby Letter of Credit must be marked: “Drawn under Comerica Bank Irrevocable Standby Letter of Credit no. <<Instrument ID>>.”

In the case of cancellation, the original Standby Letter of Credit and all Amendments thereto must be returned to us together with a written request from Beneficiary referencing this Standby Letter of Credit number and authorizing its cancellation.

All documents are to be dispatched in one lot by courier service or hand delivery to Comerica Bank International Trade Services, 2321 Rosecrans Ave., 5th fl., El Segundo, CA 90245, Attn: Standby Letter of Credit Dept.

This Irrevocable Standby Letter of Credit sets forth in full the terms of our undertaking and such undertaking shall not be in any way modified, amended or amplified by reference to any document, instrument or agreement referred to herein or in which this Irrevocable Standby Letter of Credit is referred to or to which this Irrevocable Standby Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.

We hereby engage with you that all drawing(s) made under and in compliance with the terms of this Irrevocable Standby Letter of Credit will be duly honored if drawn and presented for payment at our office located at Comerica Bank International Trade Services, 2321 Rosecrans Ave., 5th Fl., El Segundo, CA 90245, Attn: Standby Letter of Credit Dept. on or before the expiration date of this credit, January 31, 2016 or any automatically extended date.

Except so far as otherwise expressly stated herein, this Standby Letter of Credit is subject to the “International Standby Practices” (ISP 98) International Chamber of Commerce (Publication No. 590) provided that notwithstanding Rule 4.09(c) of ISP98 and regardless of whether the words “exact” or “identical” or similar words are used in this Letter of Credit, a document presented under this Letter of Credit need not reproduce the wording in this Letter of Credit exactly, including typographical errors, punctuation, spacing, blank lines and spaces, and the like.

END OF SPECIMEN FORMAT
FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this “Amendment”) is dated as of March 27, 2015 (the “Effective Date”), between SFF CASTRO STATION, LLC, a California limited liability company (“Landlord”), and LIVONGO HEALTH, INC., a Delaware corporation (“Tenant”).

RECITALS

A. Landlord and Tenant are parties to that certain Office Lease dated as of April 11, 2013 (the “Lease”), pursuant to which Tenant leases from Landlord a portion of the building located 150 W. Evelyn, Mountain View, California comprising 6,530 square feet of rentable area and commonly known as Suite 150 (the “Premises”), as more particularly described in the Lease. Capitalized terms not otherwise defined herein shall have the meanings given them in the Lease.

B. The Commencement Date of the Lease was January 1, 2015.

C. Landlord and Tenant desire to amend the Lease to provide that Landlord will be performing certain improvements to the Premises at Tenant’s expense, in accordance with the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. Tenant Improvements.

   a. Preliminary Plans. Landlord shall, through Landlord’s contractor, Devcon, at Tenant’s sole cost and expense, construct in the Premises, substantially in accordance with final and approved Tenant’s Plans (as hereinafter defined), the improvements (the “Tenant Improvements”) described in the budgets attached hereto as Schedule 1 (collectively, the “Approved Budget”) pursuant to the plans and specifications attached hereto as Schedule 2 (Schedule 1 and Schedule 2 attached hereto shall be collectively referred to herein as the “Tenant’s Plans”). All improvements constructed in the Premises shall be subject to the prior written approval of Landlord in accordance with the terms of the Lease.

   b. Construction. Landlord shall cause Landlord’s contractor to commence the construction of the Tenant Improvements as soon as is reasonably possible after the approval by Landlord and Tenant of Tenant’s Plans and receipt of all building permits for the Tenant Improvements. Landlord shall not approve any change orders to Tenant’s Plans nor approve any expenses that are inconsistent with the Approved Budget without Tenant’s prior consent. Landlord and Tenant shall cooperate with each other to resolve any space plan issues raised by applicable local building codes. Tenant acknowledges that Landlord is performing the Tenant Improvements as an accommodation to Tenant and that Landlord is not assuming any liability for any delay in completing the Tenant Improvements. In furtherance of the foregoing, the parties agree that if, for any reason whatsoever, the Tenant Improvements are not timely completed, the Lease shall not be void or voidable and Landlord shall not be liable to Tenant for any loss or damage resulting therefrom.
c. Payment of Costs. Tenant shall pay for all costs related to the design, permitting and construction of the Tenant Improvements. Tenant shall fund the cost of the design, permitting and construction of the Tenant Improvements (including all applicable fees) in installments as construction progresses within ten (10) days after Landlord submits invoices to Tenant showing in reasonable detail the services rendered, the work performed and the costs incurred. Tenant shall indemnify Landlord for all claims, losses, costs or expenses (including reasonable attorneys’ fees) arising out of Tenant’s failure to timely pay any amounts owing to Landlord or Landlord’s contractor with respect to the Tenant Improvements.

d. Supervision Fee. Notwithstanding the foregoing, with respect to the Tenant Improvements, Tenant shall pay Landlord a Supervision Fee pursuant to section 8.1(f) of the Lease within ten (10) business days of written demand.

2. Real Estate Brokers. Tenant represents and warrants that it has negotiated this Amendment directly with Landlord, and Tenant has not authorized or employed, or acted by implication to authorize or to employ, any real estate broker or salesman to act for Tenant in connection with this Amendment. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims by any real estate broker or salesman for a commission, finder’s fee or other compensation as a result of Tenant’s entering into this Amendment.

3. Authority. Each party executing this Amendment hereby represents and warrants that (a) it is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (b) it is duly qualified to do business in the state in which the Building is located, (c) it has full corporate, partnership, trust, association or other appropriate power and authority to enter into this Amendment and to perform all of its obligations under the Lease, as amended by this Amendment, and (d) each person (and all of the persons if more than one signs) signing this Amendment on its behalf is duly and validly authorized to do so.

4. No Offer. Submission of this instrument for examination and signature by Tenant does not constitute an offer to amend the Lease or a reservation of or option to amend the Lease, and this instrument is not effective as a lease amendment or otherwise until executed and delivered by both Landlord and Tenant.

5. Lease in Full Force and Effect. Except as provided above, the Lease is unmodified hereby and remains in full force and effect. To Landlord’s knowledge, as of the Effective Date, Tenant is not in default of any of its obligations under the Lease and Landlord is not aware of any facts or circumstances in existence as of the Effective Date that, due to the passage of time or otherwise, would give rise to any claim by Landlord that Tenant would be in default of any of its obligations under the Lease. Landlord further acknowledges that as of the Effective Date there are no past due rent amounts under the Lease.
IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first above written.

TENANT:

LIVONGO HEALTH, INC., a Delaware corporation

By /s/ Mario A. Christopher
Name Mario A. Christopher
Title CFO

LANDLORD

SFF CASTRO STATION, LLC
a California limited liability company,

By: SFF Realty Fund, L.P.,
a Delaware limited partnership,
its Manager

By: PSAI Realty Partners, LLC,
a Delaware limited liability company
its General Partner,

By /s/ Erik A. Foraker
Name Erik A. Foraker
Title Managing Director
Schedule 1
Approved Budget
February 27th, 2015

Sarah O’Brien
Livongo Health
150 West Evelyn Ave. Suite 150
Mountain View, CA 94041

Re.: ARCHITECTURAL DESIGN SERVICES PROPOSAL
Castro Station 1st Floor TI for LIVONGO

Dear Sarah:

This proposal covers architectural design services for the 6,200 sf TI build out for Silicon Valley Data Science located on the 1st floor west end of the Castro Station Office project in Mountain View, CA, Services for this work include Construction Documents + Construction Administration.

SCOPE

• Program includes secured lobby, (3) offices, (3) phone rooms, glass marker wall, electrical outlets and TV monitor outlets
• Dropped powered data throughout open office
• Finishes to match exist offices
• Coordination with Tennant’s furniture vendor and A/V specialist for power/data

ASSUMPTIONS

• No structural engineering is anticipated. Mechanical. Electrical and Plumbing (MEP) and Fire Protection to be provided Design-Build by General Contractor (GC)
• Signage. Security, ASV, furniture systems selection + layout design by others

FEE

We propose the scope above be provided as follows:

<table>
<thead>
<tr>
<th>Schematic Design</th>
<th>$ 2,000</th>
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<tbody>
<tr>
<td>Construction Documents:</td>
<td>$ 8,500</td>
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<tr>
<td>Construction Administration</td>
<td>$ 1,000</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>$11,500</strong></td>
</tr>
</tbody>
</table>

Reimbursables

Reproductions, materials + Agency permit lees of any kind will billed at 1.1.
Mileage will be billed at .49/mile
In-house plotting will be charged at $1.25/sf
Schedule 2
Tenant’s Plans
This First Amendment to Office Lease (this “First Amendment”) is made and entered into by and between TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, a New York corporation, for the benefit of its Real Estate Account (“Landlord”), as successor-in-interest to SFF Castro Station, LLC (“Original Landlord”), and LIVONGO HEALTH, INC., a Delaware corporation (“Tenant”), to be effective on and as of the date Landlord executes this First Amendment, as evidenced by the signature page attached hereto, and delivers a fully executed copy to Tenant (the “Effective Date”).

WITNESSETH

WHEREAS, Landlord and Tenant are parties to that certain Office Lease dated December 21, 2014 originally entered into by and between Original Landlord and Tenant (the “Lease”), pursuant to which Landlord currently leases to Tenant certain premises containing a total of 6,530 square feet of rentable area known as Suite 150 (the “Existing Premises”) of the building (the “Building”), located at 150 W. Evelyn Avenue, Mountain View, California;

WHEREAS, the current Lease Term expires on January 31, 2020 (“Existing Expiration Date”); and

WHEREAS, Landlord succeeded to all of Original Landlord’s right, title and interest under the Lease;

WHEREAS, Landlord and Tenant desire to further amend the Lease to, among other things, expand the Premises, all as more particularly described hereinbelow;

NOW, THEREFORE, for and in consideration of the promises contained herein, the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree that the Lease is hereby ratified and amended as follows:

1. Defined Terms. All capitalized terms used herein shall have the same meaning as defined in the Lease, unless otherwise defined in this First Amendment.

2. Expansion. Effective on and as of December 1, 2017 (such date being the “Expansion Commencement Date”), the Premises shall be expanded to include an additional 7,389 square feet of rentable area designated as Suite 100 of the Building (the “Expansion Space”), being more fully shown and described on the floor plan attached hereto as Exhibit A and made a part hereof for all purposes, for a term that is coterminous with the Lease Term. Tenant acknowledges that the Expansion Space is currently occupied by an existing tenant (the “Existing Tenant”) and that Landlord and such Existing Tenant are concurrently herewith entering into an early termination agreement to terminate such Existing Tenant’s lease as of November 30, 2017. Tenant hereby waives any claims against Landlord in the event that such Existing Tenant holds over in the Premises beyond the Expansion Commencement Date. If such Existing Tenant holds over in the Expansion
3. **Confirmation of the Premises.** Landlord and Tenant hereby confirm, stipulate and agree that, effective on and as of the Expansion Commencement Date, the “Premises”, as such term is used in the Lease, shall be amended and deemed to consist of 13,919 square feet of rentable area composed of the Existing Premises and the Expansion Space.

4. **Base Rent.** Tenant shall continue to pay Base Rent with respect to the Existing Premises in accordance with the terms and conditions of the Lease. Commencing on the Expansion Commencement Date and continuing thereafter throughout the remainder of the Lease Term, Tenant shall pay Base Rent for the Expansion Space as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Monthly Rent Per Sq Ft</th>
<th>Monthly Installment</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/01/2017 — 11/30/2018</td>
<td>$8.00</td>
<td>$59,112.00</td>
</tr>
<tr>
<td>12/01/2018 — 11/30/2019</td>
<td>$8.24 (approx.)</td>
<td>$60,885.36</td>
</tr>
<tr>
<td>12/01/2019 — 01/31/2020</td>
<td>$8.49</td>
<td>$62,711.92</td>
</tr>
</tbody>
</table>

5. **Additional Rent.** Tenant shall continue to pay Tenant’s Percentage Share of Operating Expenses and Property Taxes in accordance with the terms and conditions of the Lease; provided, however, commencing on the Expansion Commencement Date and continuing thereafter through the remainder of the Lease Term, for the purposes of calculating “Tenant’s Percentage Share” (as defined in the Basic Lease Information) the Premises shall be deemed to contain a total of 13,919 square feet of rentable area and the Tenant’s Percentage Share shall be deemed to be 12.12% (13,919 rsf / 114,809 rsf).
6. **Condition of the Premises.** Notwithstanding anything in the Lease to the contrary, Tenant is in possession of the Existing Premises and Tenant accepts the Existing Premises in its existing “AS-IS”, “WHERE-IS” and “WITH ALL FAULTS” condition and Landlord shall deliver the Expansion Space to Tenant following Existing Tenant’s surrender of the same, and Tenant shall accept the Expansion Space from Landlord following the Existing Tenant’s surrender of the same, in its then existing “AS-IS”, “WHERE-IS” and “WITH ALL FAULTS” condition, and Landlord shall have no obligation whatsoever to refurbish or otherwise improve the Existing Premises or the Expansion Space at any time through the expiration of the Extension Term (other than Landlord’s maintenance and repair obligations set forth in the Lease). Landlord acknowledges that Tenant may purchase the Existing Tenant’s furniture located in the Expansion Space and, in such case, that the Existing Tenant may leave such furniture in the Expansion Space for Tenant. Notwithstanding the foregoing, Landlord shall deliver the Expansion Space to Tenant with the Base Building and Base Building Systems serving the Expansion Space in good condition and repair.

7. **Parking.** The parking ratio originally set forth in Basic Lease Information shall also apply with respect to the Expansion Space; accordingly, from and after the Expansion Commencement Date, Tenant shall be allocated an additional twenty-two (22) unreserved parking spaces.

8. **Suite Entry Signage.** Following the Expansion Commencement Date, Tenant, at its sole cost and expense, shall be permitted to install building standard suite entry signage adjacent to the main entrance of the Expansion Space; the size, location, aesthetics and method of attachment of such suite entry signage being subject to Landlord’s prior written approval, which shall not be unreasonably withheld.

9. **Dog Visitation.** Subject to compliance with the Dog Visitation Policy described on Exhibit B attached hereto, Tenant’s employees may bring dogs into the Premises. Tenant shall protect, defend, indemnify and hold harmless Landlord from and against claims, damages, liabilities, costs and expenses of every kind and nature, including attorneys’ fees, incurred by or asserted against Landlord arising in connection with the rights granted to Tenant’s employees pursuant to this Paragraph 9. In addition, the commercial general liability insurance carried by Tenant pursuant to Section 13.2 of the Lease shall be required to cover claims arising from any claims arising from any dogs brought onto the Project by any of Tenant’s employees, agents or sublessees.

10. **CASp Disclosure.** As of the Effective Date of this First Amendment, neither the Building nor the Premises has undergone inspection by a Certified Access Specialist (CASp). A CASp can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, Landlord may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy Tenant, if requested by Tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises. Except as otherwise expressly agreed upon in writing by Landlord, Landlord has no obligation for the payment of the CASp fee or the cost of making repairs pursuant thereto, nor shall Landlord have any liability to Tenant arising out of or related to the fact that neither the Premises nor the Building has been inspected by a CASp, and Tenant waives all such liability and acknowledges that Tenant shall have no recourse against Landlord or the Building as a result of or in connection therewith.
11. **Broker.** Tenant represents and warrants to Landlord that Tenant has not had dealings with any real estate broker, finder or other person with respect to this First Amendment or the transactions evidenced hereby except for Jones Lang LaSalle (the “Tenant’s Broker”). If Tenant has dealt with any real estate broker, finder or other person or entity, other than the Tenant’s Broker, with respect to this First Amendment or the transactions evidenced hereby, Tenant shall be solely responsible for the payment of any commissions, fees or other amounts due said person or entity and Tenant shall indemnify and defend Landlord and hold Landlord harmless from and against any and all costs, expenses, liabilities and claims with respect thereto, including attorneys’ fees and costs. Landlord shall pay Tenant’s Broker a commission pursuant to a separate written agreement.

12. **Miscellaneous.** With the exception of the terms specifically amended herein, the Lease shall remain in full force and effect in accordance with all its terms. In the event of any conflict between the terms of this First Amendment and the terms of the Lease, the terms of this First Amendment shall supersede and control. This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one agreement. To facilitate execution of this First Amendment, the parties may execute and exchange facsimile counterparts of the signature pages and facsimile counterparts shall serve as originals.

13. **Counterparts/Facsimile Signatures.** This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one agreement. To facilitate execution of this First Amendment, the parties may execute and exchange facsimile counterparts of the signature pages and facsimile counterparts shall serve as originals.

[SIGNATURE PAGE TO FOLLOW]
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the respective dates set forth below, to be effective for all purposes, however, as of the Effective Date.

**LANDLORD:**

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, a New York corporation, for the benefit of its Real Estate Account

By: /s/ [illegible]
Name: __________________________________________
Title: __________________________________________

Date: December 1, 2017

**TENANT:**

LIVONCO HEALTH, INC., a Delaware corporation

By: /s/ Andrew W. Page
Name: Andrew W. Page
Title: President and CFO

Date: November 30, 2017
EXHIBIT B

Dog Visitation Policy

Bringing a dog to work is a privilege and requires complete responsibility on the part of the person bringing the dog to work (each, an “Owner”). Owners must recognize that (1) not all employees and/or visitors and/or other occupants of the Project appreciate dogs in the office, and (2) certain employees and/or visitors and/or other occupants of the Project may have intolerance to dogs, such as allergy, fear of, or phobia. This policy does not apply to the use of service animals at work, and appropriate arrangements will be determined in such cases. Owners are required to follow these rules when bringing a dog to the Project and such other rules as may be implemented by Landlord and/or Tenant from time to time.

Prerequisites for a Dog to be at the Project

• Properly licensed and vaccinated with proof of such license and vaccination available upon request.
• Free from contagious illness and internal and external parasites including fleas.
• Exhibits appropriate office behavior: Walks beside you on a leash; reliably housebroken; remains calm when left alone; well socialized to people, places, sounds, and objects; enjoys being around people.
• Does not exhibit inappropriate office behavior (including but not limited to): aggression, growling, barking, chasing, biting, nipping, over-exuberance, dominance, territorialism, running away, having accidents (i.e., urinating indoors), chewing or damaging office furniture or equipment, whining, howling, or otherwise interfering with an employee’s ability to do their work. Inappropriate office behavior by a dog will result in the animal no longer being allowed in the Building as reasonably determined by Landlord. In no event shall Tenant be permitted to bring any aggressive breeds of dogs to the Project or any dog that exceeds 50 pounds.
• Dogs must be washed regularly.

Dog Boundaries at Work

• Dogs must be on a leash or confined to a crate while entering and leaving the Project and may not be left alone in any common area.
• Dogs must not be in or near the employee cafeteria, break rooms, bathrooms, or conference rooms.
• Dogs must be taken to relieve themselves in the designated area only and shall not relieve themselves in any other area in the Project. If a dog relieves itself in any other areas in the Project other than the area designated by Landlord, then Tenant shall immediately notify property management in order for property management to clean the area affected. In such case Tenant shall pay all charges associated with cleaning and removing any waste generated by such dogs.
In no event shall Tenant or its employees collectively bring more than three (3) dogs at any one time to the Project. Any dogs that are brought to the Project must be registered with the property manager and, in connection with such registration, the dog owner shall provide evidence of liability insurance for the dog, vaccination records and any other information reasonably requested by Landlord.

Expectations of Dog Owners

- Owners must supervise their dogs at all times, or appoint a willing and able watcher.
- Owners must clean up after their dogs and bring supplies such as pet waste bags.
- Owners should maintain adequate liability insurance coverage against dog mishaps and take full responsibility.
THIRD AMENDMENT TO OFFICE LEASE
Castro Station
100, 150 and 200 West Evelyn Avenue
Mountain View, California

This THIRD AMENDMENT TO OFFICE LEASE ("Third Amendment") is entered into as of June 5th, 2019 ("Effective Date") by and between MCC CASTRO STATION LLC, a Delaware limited liability company ("Landlord"), and LIVONGO HEALTH, INC., a Delaware corporation ("Tenant").

RECITALS

A. Pursuant to that certain Office Lease ("Original Lease"), dated as of December 21, 2014, as amended by that certain First Amendment to Lease, dated as of March 27, 2015 ("First Amendment"), and further amended by that certain First Amendment to Office Lease, dated December 1, 2017 (such amendment, erroneously identified as a first amendment, being the "Second Amendment"), Landlord (as successor-in-interest to (i) Teachers Insurance and Annuity Association of America, a New York corporation, for the benefit of its Real Estate Account, and (ii) SFF Castro Station, LLC, a California limited liability company) currently leases to Tenant, and Tenant currently leases from Landlord, certain premises, consisting of approximately thirteen thousand nine hundred nineteen (13,919) rentable square feet ("Current Premises"), in that certain building commonly known as 150 West Evelyn Avenue, Mountain View, California ("150 Building"), which 150 Building is located in the Project (as defined in the Original Lease) commonly known as Castro Station, all as more particularly described in the Lease. The Project includes, among other things, (i) the building commonly known as 100 West Evelyn Avenue ("100 Building"), (ii) the 150 Building and (iii) the building commonly known as 200 West Evelyn Avenue ("200 Building"). The Current Premises are collectively comprised of the following portions of the first (1st) floor of the 150 Building: (i) approximately six thousand five hundred thirty (6,530) rentable square feet commonly known as Suite 150, as more particularly described in the Original Lease ("Original Premises"); and (ii) approximately seven thousand three hundred eighty-nine (7,389) rentable square feet commonly known as Suite 100, as more particularly described in the Second Amendment ("2017 Expansion Premises"). The Original Lease, First Amendment and Second Amendment shall hereinafter sometimes be collectively referred to as the "Lease."

B. The term of the Lease expires on January 31, 2020 ("Current Expiration Date"). Tenant desires to (i) extend the term of the Lease and (ii) expand its premises under the Lease. Landlord and Tenant desire to amend the Lease to, among other things, (A) extend the term of the Lease and (B) set forth the terms and conditions upon which Tenant shall lease, in addition to the Current Premises, the Expansion Premises (as defined in Section 1 below).

C. Capitalized terms used in this Third Amendment shall have the meaning ascribed to such terms in the Lease, unless otherwise defined in this Third Amendment.
NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto amend, modify and supplement the Lease as follows:

1. **Lease of Expansion Premises.** Subject to the terms and conditions of this Third Amendment, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the following space located within the first (1st) floor of the 100 Building (collectively, the "**Expansion Premises**"): (A) approximately seven thousand three hundred forty (7,340) rentable square feet commonly known as Suite 120, as generally depicted on **Exhibit A-1** attached hereto ("**First Expansion Premises**"); and (B) approximately eight thousand seven hundred sixty (8,760) rentable square feet commonly as Suite 110, as generally depicted on **Exhibit A-2** attached hereto ("**Second Expansion Premises**"). The Expansion Premises shall be conclusively deemed to consist, in the aggregate, of approximately sixteen thousand one hundred (16,100) rentable square feet (i.e., 7,340 rsf + 8,760 rsf = 16,100 rsf). The term of the Lease with respect to the First Expansion Premises and the Second Expansion Premises shall be as set forth in Section 4 below.

2. **Extended Term.** Notwithstanding anything to the contrary contained in the Lease, Landlord and Tenant hereby extend the term of the Lease through January 31, 2024 ("**Extended Term Expiration Date**"). The portion of the term of the Lease beginning on February 1, 2020 (i.e., the day immediately after the Current Expiration Date) and ending on the Extended Term Expiration Date shall be referred to herein as the "**Extended Term**". Subject to the terms and conditions of Section 4 below: (i) the term of the Lease with respect to the First Expansion Premises shall commence on July 1, 2019 (such date, as the same may be extended on a day-for-day basis, pursuant to the express terms and conditions of Section 4(a) below, being the "**First Expansion Premises Commencement Date**"); and (ii) the term of the Lease with respect to the Second Expansion Premises shall commence on February 1, 2020 (such date, as the same may be extended on a day-for-day basis, pursuant to the express terms and conditions of Section 4(b) below, being the "**Second Expansion Premises Commencement Date**"); provided, however, that, irrespective of when the First Expansion Premises Commencement Date and/or Second Expansion Premises Commencement Date shall have occurred, the Lease shall expire with respect to both the First Expansion Premises and the Second Expansion Premises on the Extended Term Expiration Date (i.e., January 31, 2024), it being the intent of the parties that, notwithstanding anything to the contrary contained in the Lease and/or this Third Amendment, the Lease shall be coterminous with respect to the Current Premises and Expansion Premises. At any time and from time to time, Landlord may deliver to Tenant a notice in the form set forth in **Exhibit B** attached hereto, with all information accurately completed, which Tenant shall execute and return to Landlord within ten (10) business days of receipt thereof.
3. Condition; Existing Violations (Expansion Premises); Warranty Periods (Expansion Premises).

(a) Condition. Tenant is in possession and occupancy of the Current Premises as of the Effective Date. Tenant agrees and warrants that it has inspected the condition of the Current Premises and Expansion Premises, and the suitability of the same for Tenant’s purposes, and Tenant does hereby waive and disclaim any objection to, cause of action based upon, or claim that its obligations hereunder (and/or under the Lease) should be reduced or limited because of the condition of such Current Premises and/or Expansion Premises, and/or the suitability of the same for Tenant’s purposes. Tenant further agrees and acknowledges that, except for Landlord’s obligation to disburse, in accordance with the terms and conditions of the Work Letter Agreement attached as Exhibit C hereto ("Work Letter"), (A) the Expansion Premises Allowance (as defined in the Work Letter) with respect to the Expansion Premises and (B) the Current Premises Allowance with respect to the Current Premises, Landlord has no obligation to alter, improve or refurbish (and/or cause the alteration, improvement and/or refurbishment of) the Current Premises and/or Expansion Premises for Tenant’s use or benefit, and/or provide an allowance for such purpose, the Current Premises and Expansion Premises shall be accepted by Tenant in “as-is condition,” “with all faults,” and “without any representations or warranties.” Tenant acknowledges that neither Landlord nor any agent nor any employee of Landlord has made any representations or warranties with respect to the Current Premises, Expansion Premises and/or the Project or with respect to the suitability of the same for the conduct of Tenant’s business. Tenant’s continued occupancy and possession of the Expansion Premises, and taking of possession of the Expansion Premises, shall conclusively establish that the Current Premises, Expansion Premises and the Project were at such time in satisfactory condition.

Notwithstanding the foregoing, (A) Landlord warrants and represents that, as of the Effective Date, Landlord has not received written notice from any governmental agency (and Landlord does not otherwise have actual knowledge, without any duty of investigation or inquiry) that the Expansion Premises (or any portion thereof) are in violation of (i) building codes (including seismic codes) and/or (ii) the Americans with Disabilities Act of 1990 (as amended) ("ADA") (in all cases, as then locally enforced and interpreted) to the extent relating to the original construction (or subsequent alteration prior to the Effective Date) of the Expansion Premises (if applicable, any such existing violations of the building codes and/or ADA being “Existing Expansion Premises Violations”) and (B) if any Existing Expansion Premises Violations exist as of the Effective Date, as Tenant’s sole and exclusive remedy, Landlord shall be responsible, at Landlord’s sole cost and expense, for correcting any such Existing Expansion Premises Violations (in all cases (i) without regard to Tenant’s particular use of the Expansion Premises and/or alterations, additions and/or improvements and (ii) subject to any “grandfathered” rights); provided, however, Tenant’s right to enforce Landlord’s obligation to perform (or cause to be performed) any work relating to Existing Expansion Premises Violations shall be limited to circumstances in which non-compliance would (a) impair the safety of Tenant’s employees or create a health hazard for Tenant’s employees, (b) materially impair Tenant’s use and occupancy of, or access to, the Expansion Premises (or any material portion thereof) for typical and customary general office purposes, and/or (c) impose liability upon Tenant under applicable law. Notwithstanding the foregoing, (1) Landlord shall have the right to promptly and diligently contest the need to perform any code compliance work in good faith, including, without limitation, the right to apply for and obtain a waiver or deferment of compliance, the right to assert any and all defenses allowed by law and the right to appeal any decisions, judgments or rulings to the fullest extent permitted by applicable law (collectively, the “Landlord Appeal Right(s)”) and (2) after exhausting any such Landlord Appeal Right(s), Landlord shall perform any work necessary to comply with any final order or judgment as soon as
reasonably practicable thereafter. Tenant hereby agrees and acknowledges that (i) for purposes hereof, “building codes” shall in no event include any requirements imposed by “Title 24” laws and regulations and (ii) compliance with any and all such “Title 24” laws and regulations shall be performed by Tenant, at Tenant’s sole cost and expense (subject to the availability of the Expansion Premises Allowance).

Nothing set forth in this Section 3(a) shall be deemed to relieve Landlord from any express repair, maintenance and replacement obligations on the part of the Landlord to be performed under the Lease.

(b) Warranty Periods (Expansion Premises). Notwithstanding the foregoing, if (i) during the one hundred eighty (180) day period immediately following (1) the First Expansion Premises Commencement Date, with respect to the First Expansion Premises, and/or (2) the Second Expansion Premises Commencement Date, with respect to the Second Expansion Premises (each such period being a “Building Systems Warranty Period”), the existing building-wide electrical, plumbing, mechanical, life-safety systems and/or heating, ventilation and air-conditioning systems serving, as applicable, the First Expansion Premises and/or Second Expansion Premises are not in good working order (as defined in this grammatical paragraph below) and (ii) prior to the expiration of the applicable Building Systems Warranty Period (each such expiration date being a “Non-Compliance Outside Date”), Tenant delivers to Landlord a reasonably-detailed written notice (“Non-Compliance Notice”) identifying which of the foregoing item(s) is/are not then in good working order (if applicable, “Non-Compliance Condition”), then, unless such Non-Compliance Condition was caused by the negligent and/or wrongful acts or omissions of Tenant (and/or its employees, agents, contractors and/or invitees), as Tenant’s sole and exclusive remedy therefor, Landlord shall, within a reasonable period of time after Landlord’s receipt of Tenant’s Non-Compliance Notice, at Landlord’s sole cost and expense (without right of reimbursement), perform (or cause to be performed) such work that Landlord deems necessary (in Landlord’s reasonable discretion) to correct such Non-Compliance Condition (if applicable, the “Correction Work”). If Tenant fails to deliver the Non-Compliance Notice to Landlord on or before the applicable Non-Compliance Outside Date, then, subject to the express terms and conditions of Section 7.1 of the Original Lease, (i) Landlord shall repair and maintain the non-compliant Building system(s) and (ii) the cost of any Correction Work performed by Landlord shall be included in Operating Expenses (subject to the terms and conditions of Section 4.1(a) of the Original Lease). For purposes of this grammatical paragraph, “good working order” shall mean that the system in question is operating within the manufacturer’s specifications therefor for typical and customary general office use (which, for purposes hereof, shall include computer-based software research and development in a manner consistent with Tenant’s use of the Current Premises as of the Effective Date) (as determined by Landlord, in its reasonable discretion). In no event shall Landlord’s obligations pursuant to the immediately-preceding sentence alter the maintenance obligations contained within the Lease (as amended).

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4. Scheduled Delivery Dates; Tenant’s Work.

(a) First Expansion Premises; Existing First Expansion Premises Lease. During the period commencing on the First Expansion Premises Delivery Date (as defined below) and expiring on June 30, 2019 (such period being the “First Expansion Premises Construction Period”), Tenant shall be entitled to access and occupy the First Expansion Premises solely for the purpose of (1) performing the Tenant’s Work (as defined in the Work Letter) applicable to the First Expansion Premises and (2) installing Tenant’s furniture, fixtures and equipment (“Tenant FF&E”) therein; provided that (i) Tenant shall coordinate with Landlord’s activities, (ii) all provisions of the Lease (as amended), other than those relating to the payment of Base Rent, Operating Expenses and Property Taxes for the First Expansion Premises, shall apply during such First Expansion Premises Construction Period (including specifically, without limitation, all provisions relating to insurance, indemnity and freedom from liens), and (iii) if Tenant commences business operations from any portion of the First Expansion Premises during such First Expansion Premises Construction Period, then (1) the First Expansion Premises Commencement Date shall be deemed to be the date Tenant commences such business operations therefrom and (2) the term relating to such First Expansion Premises shall be extended for a period of time equal to the time between such advanced First Expansion Premises Commencement Date and the original First Expansion Premises Commencement Date. As used in this Section 4(a), commencing “business operations” shall mean that Tenant is occupying and using more than thirty-five percent (35%) of the First Expansion Premises primarily for the purpose of conducting its normal business operations therefrom (as distinct from performing Tenant’s Work, or otherwise making the First Expansion Premises ready for its occupancy).

Landlord shall use commercially reasonable efforts to deliver possession of the First Expansion Premises on or before June 6, 2019 (“Scheduled First Expansion Premises Delivery Date”). For purposes of this Third Amendment, the “First Expansion Premises Delivery Date” shall be the date that Landlord actually delivers possession of the First Expansion Premises to Tenant for Tenant’s performance of the Tenant’s Work, and installation of Tenant FF&E, therein. If Landlord is unable to deliver possession of the First Expansion Premises to Tenant on or before the Scheduled First Expansion Premises Delivery Date, or any other date, for any reason (including any existing occupant’s failure to timely vacate and surrender), Landlord shall not be subject to any liability for its failure to do so, and such failure shall not affect the validity of this Third Amendment and/or the Lease nor the obligations of Tenant hereunder and/or thereunder, but, in such event, the First Expansion Premises Construction Period (and the First Expansion Premises Commencement Date) shall be extended on a day-for-day basis for each day that elapses between the Scheduled First Expansion Premises Delivery Date and the actual First Expansion Premises Delivery Date.

Landlord and Tenant hereby agree and acknowledge that (1) as of the Effective Date, the First Expansion Premises are leased to another tenant (“Existing First Expansion Premises Tenant”) pursuant to a lease (“Existing First Expansion Premises Lease”) that expires by its terms on November 19, 2019, and (2) prior to the Effective Date, Landlord entered into a written agreement, by and between Landlord and the Existing First Expansion Premises Tenant, on terms and conditions acceptable to Landlord (in its sole and absolute discretion) (as amended, the “Existing First Expansion Premises Lease Termination Agreement”), which, among other things, memorialized Existing First Expansion Premises Tenant’s obligation to vacate and surrender the Premises on or before June 5, 2019, or as soon thereafter as is reasonably practicable. Tenant hereby agrees and acknowledges that the terms and conditions of this grammatical paragraph shall in no event be deemed to modify, amend or otherwise affect the terms and conditions of the last sentence of the immediately preceding grammatical paragraph. Landlord and Tenant hereby agree and acknowledge that, if the Existing First Expansion Premises Tenant does not vacate and surrender
the First Expansion Premises on or before June 5, 2019, then Landlord shall use commercially reasonable efforts to gain possession of the First Expansion Premises as soon as reasonably practicable, which commercially reasonable efforts may include, in Landlord’s reasonable discretion, the initiation and prosecution of an unlawful detainer action.

Notwithstanding anything to the contrary contained in this Third Amendment, if (x) this Third Amendment is executed and delivered by Tenant on or before June 5, 2019, (y) the First Expansion Premises Delivery Date does not occur by June 20, 2019 (such date being the “First Expansion One-For-One Rent Credit Trigger Date”) for any reason other than any delays caused by Tenant (and/or any of its employees, agents, contractors and/or representatives) (“Tenant Delays”) and/or any “Force Majeure” delays of the nature contemplated in Section 18(f) below (it being the intent of the parties that such First Expansion One-For-One Rent Credit Trigger Date shall be extended one (1) day for each day of any such delays caused by Tenant Delays and/or Force Majeure delays) and (z) Landlord is not using the commercially reasonable efforts described in the immediately-preceding sentence, then Tenant’s sole and exclusive remedy as a result thereof shall be to receive a credit against the Base Rent due with respect to the First Expansion Premises (any such amount being the “First Expansion Premises One-for-One Rent Credit”), which First Expansion Premises One-for-One Rent Credit shall be in the form of an extension of the conditional rent abatement period (as contemplated in Section 5(e) below), applicable to the First Expansion Premises only, equal to one (1) day for each day that shall have elapsed between the First Expansion One-For-One Rent Credit Trigger Date and the First Expansion Premises Delivery Date.

If (and only to the extent that) Tenant fails to substantially complete the Tenant’s Work in the First Expansion Premises by the expiration of the First Expansion Premises Construction Period as a direct result of any Landlord Delay (as defined below), then the First Expansion Premises Construction Period shall be deemed to have been extended one (1) day for each day that Tenant is actually and reasonably prevented from substantially completing the Tenant’s Work in the First Expansion Premises by the expiration of such First Expansion Premises Construction Period as a direct result of any such Landlord Delay. “Landlord Delay” shall mean (1) Landlord’s failure to approve or disapprove any item(s) requiring Landlord’s approval within the time period specified in the Work Letter for the item(s) in question and/or (2) subject to Tenant’s compliance with the Landlord’s construction rules and regulations and the terms and conditions of the Work Letter, Landlord’s material interference with Tenant’s construction of the Tenant’s Work, which failure and/or material interference shall have continued for more than three (3) business days after Landlord’s receipt of written notice from Tenant setting forth (in reasonable detail) the cause of such claimed Landlord Delay, and provided that any such Landlord Delay shall be deemed to accrue only during the period elapsing between (a) the expiration of the three (3) business day cure period described in this sentence above and (b) the cessation of such failure and/or material interference.

(b) Second Expansion Premises. During the period commencing on the Second Expansion Premises Delivery Date (as defined below) and expiring on January 31, 2020 (such period being the “Second Expansion Premises Construction Period”), Tenant shall be entitled to access and occupy the Second Expansion Premises solely for the purpose of (1) performing Tenant’s Work applicable to the Second Expansion Premises and (2) installing Tenant FF&E therein; provided that (i) Tenant shall coordinate with Landlord’s activities, (ii) all provisions of the Lease (as amended), other than those relating to the payment of Base Rent, Operating Expenses and
Property Taxes for the Second Expansion Premises, shall apply during such Second Expansion Premises Construction Period (including specifically, without limitation, all provisions relating to insurance, indemnity and freedom from liens), and (iii) if Tenant commences business operations from any portion of the Second Expansion Premises during such Second Expansion Premises Construction Period, then (1) the Second Expansion Premises Commencement Date shall be deemed to be the date Tenant commences such business operations therefrom and (2) the term relating to such Second Expansion Premises shall be extended for a period of time equal to the time between such advanced Second Expansion Premises Commencement Date and the original Second Expansion Premises Commencement Date. As used in this Section 4(b), commencing “business operations” shall mean that Tenant is occupying and using more than thirty-five percent (35%) of the Second Expansion Premises primarily for the purpose of conducting its normal business operations therefrom (as distinct from performing Tenant’s Work, or otherwise making the Second Expansion Premises ready for its occupancy).

Landlord shall use commercially reasonable efforts to deliver possession of the Second Expansion Premises on or before January 1, 2020 (“Scheduled Second Expansion Premises Delivery Date”). For purposes of this Third Amendment, the “Second Expansion Premises Delivery Date” shall be the date that Landlord actually delivers possession of the Second Expansion Premises to Tenant for Tenant’s performance of the Tenant’s Work, and installation of Tenant FF&E, therein. If Landlord is unable to deliver possession of the Second Expansion Premises to Tenant on or before the Scheduled Second Expansion Premises Delivery Date, or any other date, for any reason (including any existing occupant’s failure to timely vacate and surrender), Landlord shall not be subject to any liability for its failure to do so, and such failure shall not affect the validity of this Third Amendment and/or the Lease nor the obligations of Tenant hereunder and/or thereunder, but, in such event, the Second Expansion Premises Construction Period (and the Second Expansion Premises Commencement Date) shall be extended on a day-for-day basis for each day that elapses between the Scheduled Second Expansion Premises Delivery Date and the actual Second Expansion Premises Delivery Date.

Notwithstanding anything to the contrary contained in this Third Amendment, if the Second Expansion Premises Delivery Date does not occur by March 1, 2020 (such date being the “Second Expansion One-For-One Rent Credit Trigger Date”) for any reason other than any Tenant Delays and/or any “Force Majeure” delays of the nature contemplated in Section 18(f) below (it being the intent of the parties that such Second Expansion One-For-One Rent Credit Trigger Date shall be extended one (1) day for each day of any such delays caused by Tenant Delays and/or Force Majeure delays), then Tenant’s sole and exclusive remedy as a result thereof shall be to receive a credit against the Base Rent due with respect to the Second Expansion Premises (any such amount being the “Second Expansion Premises One-for-One Rent Credit”), which Second Expansion Premises One-for-One Rent Credit shall be in the form of an extension of the conditional rent abatement period (as contemplated in Section 5(e) below), applicable to the Second Expansion Premises only, equal to one (1) day for each day that shall have elapsed between the Second Expansion One-For-One Rent Credit Trigger Date and the Second Expansion Premises Delivery Date.
If (and only to the extent that) Tenant fails to substantially complete the Tenant’s Work in the Second Expansion Premises by the expiration of the Second Expansion Premises Construction Period as a direct result of any Landlord Delay, then the Second Expansion Premises Construction Period shall be deemed to have been extended one (1) day for each day that Tenant is actually and reasonably prevented from substantially completing the Tenant’s Work in the Second Expansion Premises by the expiration of such Second Expansion Premises Construction Period as a direct result of any such Landlord Delay.

(c) **Current Premises.** Subject to the terms and conditions of the Work Letter, Tenant shall be entitled to perform (or cause to be performed) the Tenant’s Work applicable to the Current Premises; provided that all provisions of the Lease, including those relating to the payment of Base Rent, Operating Expenses and Property Taxes for the Current Premises shall apply (including specifically, without limitation, all provisions relating to insurance, indemnity and freedom from liens) during the performance of any such Tenant’s Work in the Current Premises.

5. Base Rent

(a) **Current Premises.** During the period commencing with the Effective Date and expiring on the Current Expiration Date (i.e., January 31, 2020), Tenant shall continue to pay Base Rent with respect to the Current Premises as follows: (A) with respect to the Original Premises, in accordance with the schedule set forth in the Basic Lease Information of the Original Lease; and (B) with respect to the 2017 Expansion Premises, in accordance with Section 4 of the Second Amendment. From and after February 1, 2020 (i.e., the day after the Current Expiration Date), the Base Rent payable by Tenant under the Lease with respect to the Current Premises shall be calculated, on a per-rentable-square-foot basis, using the applicable monthly rates set forth in the rent schedule contained in Section 5(d) below.

(b) **First Expansion Premises.** From and after the First Expansion Premises Commencement Date, Tenant shall pay Base Rent with respect to the First Expansion Premises, on a per-rentable-square-foot basis, using the applicable monthly rates set forth in the rent schedule contained in Section 5(d) below.

(c) **Second Expansion Premises.** From and after the Second Expansion Premises Commencement Date, Tenant shall pay Base Rent with respect to the Second Expansion Premises, on a per-rentable-square-foot basis, using the applicable monthly rates set forth in the rent schedule contained in Section 5(d) below.

(d) **Monthly Base Rent Rates.**

<table>
<thead>
<tr>
<th>Applicable Commencement Date* through Extended Term Expiration Date (i.e., January 31, 2024)</th>
<th>Monthly Rental Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicable Commencement Date through the last day of the twelfth (12th) full calendar month thereafter</td>
<td>$8.65/RSF</td>
</tr>
<tr>
<td>13th - 24th full calendar month</td>
<td>$8.91/RSF</td>
</tr>
<tr>
<td>25th - 36th full calendar month</td>
<td>$9.18/RSF</td>
</tr>
<tr>
<td>37th – 48th full calendar month**</td>
<td>$9.46/RSF</td>
</tr>
<tr>
<td>49th full calendar month through Extended Term Expiration Date - (i.e., January 31, 2024)***</td>
<td>$9.74/RSF</td>
</tr>
</tbody>
</table>
* Respectively, (i) the First Expansion Premises Commencement Date, (ii) the Second Expansion Premises Commencement Date and (iii) February 1, 2020 with respect to the Current Premises. Irrespective of the applicable commencement date, the term of the Lease shall be coterminous and expire on the Extended Term Expiration Date (i.e., January 31, 2024) with respect to (i) the First Expansion Premises, (ii) the Second Expansion Premises and (iii) the Current Premises.

** In order to effectuate the coterminous expiration described above, the term applicable to the Second Expansion Premises shall be adjusted accordingly if the last day of the 48th full calendar month following the Second Expansion Premises Commencement Date occurs on a date other than such Extended Term Expiration Date (i.e., January 31, 2024). With respect to the Current Premises, the last day of the 486 full calendar month following February 1, 2020 and the Extended Term Expiration Date (i.e., January 31, 2024) shall be one and the same.

*** This rate is only applicable with respect to the First Expansion Premises

Within ten (10) business days of the Second Expansion Premises Commencement Date, the parties shall execute a notice in the form set forth in Exhibit B attached hereto, memorializing the total Base Rent due for the entire Premises.

Except as otherwise expressly set forth in this Section 5 above, Base Rent shall be paid by Tenant at the same time and in the same manner as set forth in the Original Lease. Landlord and Tenant hereby agree and acknowledge that, if the First Expansion Premises Commencement Date and/or Second Expansion Premises Commencement Date shall occur on a date that is not the first (1st) day of a calendar month, then the first twelve (12) month interval described in the rent schedule set forth in this Section 5(d) above shall also include such initial partial month (on a pro-rated basis), but, for purposes of the Base Rent escalations set forth therein, be deemed to have commenced on the first (1st) day of the first full calendar month following the applicable commencement date, with the result that all such twelve (12) month Base Rent escalation intervals shall commence on the first (1st) day of a calendar month.

(c) **Conditional Abatement of Base Rent.** So long as there is no Event of Default (as defined in Article 18 of the Original Lease) on the applicable Base Rent abatement date, the following monthly installments of Base Rent shall be abated: (A) with respect to the First Expansion Premises, the installments of Base Rent due therefor during the first (1st) through third (3rd) full calendar months, inclusive, following the First Expansion Premises Commencement Date, (B) with respect to the Second Expansion Premises, the installments of Base Rent due therefor during the first (1st) through third (3rd) full calendar months, inclusive, following the Second Expansion Premises

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Commencement Date and (C) with respect to the Current Premises, the installments of Base Rent due therefor during the full calendar months of February 2020, March 2020 and April 2020. Tenant hereby agrees and acknowledges that, if an Event of Default (as defined in Article 18 of the Original Lease) results in the termination of the Lease, then, in addition to any and all of its rights, powers and remedies as may be permitted at law, in equity and/or under the Lease, Landlord shall be entitled to recover the unamortized portion of any and all such abated Base Rent that would have been due during the applicable conditional abatement period, which shall be a percentage equivalent to a fraction, (i) the denominator of which shall be the number of entire calendar months between the end of each Base Rent abatement period and the Extended Term Expiration Date, and (ii) the numerator of which shall be the difference between the denominator and the number of entire calendar months elapsed from the end of each Base Rent abatement period until the occurrence of any such Event of Default.

6. Tenant’s Percentage Share. Notwithstanding anything to the contrary contained in the Lease and/or this Third Amendment, including, without limitation, the Basic Lease Information set forth in the Original Lease and Section 4 of the Second Amendment, Landlord and Tenant hereby agree and acknowledge that: (i) from and after the First Expansion Premises Commencement Date, Tenant’s Percentage Share shall be 18.52% of the Project (erroneously identified as the “Building” in the Lease) (and not 12.12% of the Project) and (ii) from and after the Second Expansion Premises Commencement Date, Tenant’s Percentage Share shall be 26.15% of the Project.

7. Parking. From and after the First Expansion Premises Commencement Date, Tenant shall be entitled to use an additional twenty-two (22) unreserved parking spaces (“First Expansion Premises Parking Allocation”), with the result that the number of unreserved parking spaces which Tenant is entitled to use under the Lease shall be sixty-three (63) unreserved spaces (and not forty-one (41) unreserved spaces). From and after the Second Expansion Premises Commencement Date, Tenant shall be entitled to use an additional twenty-six (26) unreserved parking spaces (“Second Expansion Premises Parking Allocation”), with the result that the number of unreserved parking spaces which Tenant is entitled to use under the Lease shall be eighty-nine (89) unreserved spaces (and not sixty-three (63) unreserved spaces). Tenant’s use of the unreserved parking spaces allocated pursuant to the terms and conditions of the Lease (as amended by this Third Amendment) shall be free of charge through and including the Second Extended Term Expiration Date (i.e., January 31, 2024).

8. Brokers. Each party represents and warrants to the other party that it has not had dealings in any manner with any real estate broker, finder or other person with respect to the Extended Term and/or the negotiation and execution of this Third Amendment, except Cushman & Wakefield ("C&W"), on behalf of Landlord, and Savills ("Savills"), on behalf of Tenant. Except as to commissions and fees to be paid as provided hereunder, Landlord and Tenant shall indemnify, defend and hold harmless the other party from all damage, loss, liability and expense (including reasonable attorneys’ fees and related costs) arising out of or resulting from any claims for commissions or fees that may or have been asserted against such other party by any broker, finder or other person with whom either Landlord or Tenant, as applicable, has or purportedly has dealt in connection with the Extended Term and/or the negotiation and execution of this Third Amendment. Landlord shall pay broker leasing commissions to C&W in connection with the negotiation and execution of this Third Amendment pursuant to a separate agreement between Landlord and C&W.
and C&W shall pay Savills a portion of such commission pursuant to a separate agreement between C&W and Savills. Landlord and Tenant agree that Landlord shall not be obligated to pay any broker leasing commissions, consulting fees, finder fees or any other fees or commissions arising out of or relating to an extension of the Extended Term or to any expansion or relocation at any time.

9. Insurance Requirements; Indemnification and Exculpation. From and after the Effective Date, (x) Article 12 (Subrogation) and Article 13 (Indemnification and Insurance) of the Original Lease shall be deemed deleted and replaced in their entirety with the terms and conditions set forth in Exhibit E attached hereto; (y) any and all references in the Lease to the provisions of such Article 12 and/or Article 13 of the Original Lease shall be deemed to be references to the corresponding provisions set forth in such Exhibit E; and (z) Tenant shall comply with the terms and conditions set forth in such Exhibit E. Notwithstanding the foregoing, Tenant shall not be obligated to comply with the property insurance requirements set forth in subclause (d)(i)(C) of such Exhibit E until the date that is fifteen (15) business days after the Effective Date, and until such date, Tenant shall continue to comply with the property insurance requirements set forth in Article 13.2(e) of the Original Lease. Tenant shall deliver to Landlord the evidence of insurance required pursuant to the penultimate sentence of subclause (d)(i) of Exhibit E as follows: (i) with respect to the Current Premises, on the Effective Date (subject to the immediately preceding sentence); (ii) with respect to the First Expansion Premises, on the First Expansion Premises Delivery Date (subject to the immediately preceding sentence); and (iii) with respect to the Second Expansion Premises Delivery Date. Exhibit E attached hereto, together with the other exhibits attached to this Third Amendment, shall be deemed incorporated by reference into this Third Amendment, as though set forth in full herein.

10. Corporate Authority. Tenant represents and warrants that the person or persons executing this Third Amendment on behalf of Tenant has the full right and authority to do so on behalf of Tenant and to bind Tenant with respect to each and every term and condition set forth in this Third Amendment without the consent or approval of any other person or entity.

11. Extension Rights. Landlord and Tenant hereby agree and acknowledge that any and all provisions of the Lease granting (or purportedly granting) Tenant the right to extend or renew the term of the Lease are hereby deleted in their entirety for all purposes of the Lease (and this Third Amendment) as of the Effective Date, it being the intent of the parties that any and all such extension and/or renewal rights are hereby expressly deemed null and void ab initio and of no further force or effect. Notwithstanding the preceding sentence, Landlord hereby grants Tenant two (2) options to extend the initial Extended Term, as set forth in Exhibit D attached hereto.

12. OFAC. Tenant certifies, represents, warrants and covenants that neither Tenant nor any of its partners, officers, directors, members or shareholders (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (“OFAC”) pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (“Order”); (ii) is listed on the Denied Persons List and Entity List maintained by the United States Department of Commerce; (iii) is listed on the List of Terrorists and List of Disbarred Parties maintained by the United States Department of State, (iv) is listed on any list or qualification of “Designated Nationals” as defined in the Cuban Assets Control Regulations.
31 C.F.R. Part 515; (v) is listed on any other publicly available list of terrorists, terrorist organizations or narcotics traffickers maintained by the United States Department of State, the United States Department of Commerce or any other governmental authority or pursuant to the Order, the rules and regulations of OFAC (including without limitation the Trading with the Enemy Act, 50 U.S.C. App. 1-44; the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06; the unrepealed provision of the Iraq Sanctions Act, Pub.L. No. 101-513; the United Nations Participation Act, 22 U.S.C. § 2349 as-9; The Cuban Democracy Act, 22 U.S.C. §§ 60-01-10; The Cuban Liberty and Democratic Solidarity Act, 18 U.S.C. §§ 2332d and 233; and The Foreign Narcotic Kingpin Designation Act, Pub.L. No. 106-120 and 107-108, all as may be amended from time to time); or any other applicable requirements contained in any enabling legislation or other Executive Orders in respect of the Order (the Order and such other rules, regulations, legislation or orders are collectively called the “Orders”); (vi) is engaged in activities prohibited in the Orders; or (vii) has been convicted, pleaded nolo contendere, indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes or in connection with the Bank Secrecy Act (31 U.S.C. §§ 5311 et. seq.).

Without limiting the generality of the foregoing, Tenant certifies, represents, warrants and covenants that: (a) It is not acting and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person”, or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (b) It is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Tenant hereby agrees to defend (with counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord and the Landlord Parties from and against any and all claims arising from or related to any such breach of the foregoing certifications, representations, warranties and covenants.

13. Certified Access Specialist. For purposes of California Civil Code Section 1938, Landlord hereby discloses to Tenant that, as of the Effective Date, to Landlord’s actual knowledge, the Current Premises and Expansion Premises have not undergone inspection by a Certified Access Specialist (“CASp”). Pursuant to California Civil Code Section 1938(e), Landlord hereby further discloses to Tenant the following: “A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.” Notwithstanding the foregoing and/or anything to the contrary contained in the Lease and/or this Third Amendment, Landlord and Tenant hereby agree and acknowledge that, in the event Tenant desires to obtain a CASp inspection, then:

(x) Tenant shall provide Landlord with no less than twenty (20) business days’ prior written notice and, upon receipt of such notice, Landlord shall have the right to, among other things, (i) select the date and time at which such inspection shall occur, and (ii) have one (1) or more representatives present during such inspection.
(y) Tenant hereby agrees and acknowledges that it shall (x) provide Landlord with a copy of any and all findings, reports and/or other materials (collectively, the "CASp Report") provided by the CASp immediately following Tenant’s receipt thereof; (y) at all times maintain (and cause to be maintained) the CASp Report and its findings (and any and all other materials related thereto) confidential and (z) pay for the CASp inspection and CASp Report at Tenant’s sole cost and expense. If Tenant receives a disability access inspection certificate, as described in subdivision (e) of California Civil Code Section 55.53, in connection with or following any CASp inspection undertaken on behalf, or for the benefit, of Tenant, then Tenant shall cause such certificate to be provided immediately to Landlord.

(z) If the CASp Report identifies any violation(s) of applicable construction-related accessibility standards ("CASp Violation(s)"), Tenant shall immediately provide written notice to Landlord of any and all such CASp Violation(s). In such event, Tenant shall, at Tenant’s sole cost and expense, perform, or cause to be performed, any repairs, modifications and/or other work necessary to correct any and all such CASp Violation(s), irrespective of whether such CASp Violations relate to the Current Premises, Expansion Premises, Building and/or Project (any such repairs, modifications and/or other work being collectively referred to herein as the "CASp Work"). Tenant shall commence (or cause the commencement of) such CASp Work no later than fifteen (15) business days after Landlord’s receipt of the CASp Report in accordance with the terms and conditions of the Lease, as amended (including, without limitation, Article 8 of the Original Lease). Tenant shall diligently prosecute (or cause to be diligently prosecuted) to completion all such CASp Work in a lien free, good and workmanlike manner, and, upon completion, obtain an updated CASp Report showing that the Current Premises and Expansion Premises (and any other portions of the Building and/or Project where CASp Violations were identified) then comply with all applicable construction-related accessibility standards. Any and all cost and expense associated with the CASp Work and/or the updated CASp Report (which Tenant shall provide to Landlord immediately upon Tenant’s receipt thereof) shall be at Tenant’s sole cost and expense.

To the fullest extent permitted by law, Tenant hereby (A) waives and disclaims any objection to, cause of action based upon, or claim that its obligations hereunder should be reduced or limited as a result of, the Current Premises and/or Expansion Premises not having been inspected by a Certified Access Specialist (CASp), and (B) agrees and acknowledges that the lack of such Certified Access Specialist (CASp) inspection shall in no event modify, diminish, enlarge or otherwise affect the respective rights and obligations of the parties under the Lease and/or this Third Amendment.

Notwithstanding anything to the contrary contained in the Lease (including, without limitation, Article 8 of the Original Lease) and/or this Third Amendment, unless required under applicable law (and/or required by Landlord’s lender), Landlord shall not require (or compel) Tenant, as a condition to Landlord’s consent to any Tenant’s Work and/or Alteration(s), or otherwise, to cause the Premises to be inspected and certified by a Certified Access Specialist (CASp) (following completion) as meeting all applicable construction-related accessibility standards pursuant to California Civil Code Section 55.53.
14. **Letter of Credit.** Landlord and Tenant hereby agree and acknowledge that (i) as of the Effective Date, Landlord holds the Letter of Credit described in Article 27 of the Original Lease, which Letter of Credit is in the amount of One Hundred Seventy-eight Thousand Nine Hundred Twenty-two Dollars ($178,922.00) ("Existing Letter of Credit"), (ii) the Existing Letter of Credit is attached as Exhibit F-1 hereto and (iii) within ten (10) business days after the Effective Date (time being of the essence), Tenant shall deliver to Landlord an amendment of such Existing Letter of Credit, in the form and content attached as Exhibit F-2 hereto, that, among other things, (A) increases the Letter of Credit Amount (as described in the Basic Lease Information set forth in the Original Lease) by the amount of Six Hundred Seventy-nine Thousand One Hundred Eighty-three Dollars ($679,183.00), with the result that, simultaneously with the execution of this Third Amendment, such Letter of Credit Amount shall be increased to the amount of Eight Hundred Fifty-eight Thousand One Hundred Five Dollars ($858,105.00) and (B) extends the applicability of the Existing Letter of Credit, as so amended, to Tenant’s obligations under the Lease, as amended by this Third Amendment.

Notwithstanding anything to the contrary contained in the Lease and/or this Third Amendment, from and after the Effective Date, (i) Article 27 of the Original Lease shall be deemed deleted and replaced in its entirety by the terms and conditions set forth in Exhibit F-3 attached hereto and (ii) such terms and conditions shall apply with respect to the Existing Letter of Credit, as amended pursuant to the terms and conditions of this Section 14.

15. **Confidentiality.** Tenant and Landlord each agree that the terms of the Lease and this Third Amendment are confidential and constitute proprietary information of the parties, and that disclosure of the terms thereof and hereof could adversely affect the interests of the parties. Tenant hereby agrees that Tenant and its partners, officers, directors, employees, agents, real estate brokers and sales persons and attorneys shall not disclose the terms of the Lease and/or this Third Amendment to any other person without Landlord’s prior written consent, except to any accountants of Tenant in connection with the preparation of Tenant’s financial statements or tax returns, to an assignee of this Lease or subtenant of the Premises, to Tenant’s attorneys, brokers and other advisors, or to an entity or person to whom disclosure is required by applicable law or in connection with any action brought to enforce the Lease (as amended). Landlord and its partners, officers, directors, employees, agents, real estate brokers and sales persons and attorneys shall not disclose the economic terms of the Lease and/or this Third Amendment to any other person without Tenant’s prior written consent, except to any accountants of Landlord, attorneys, brokers, other advisors, lenders, prospective lenders, Property purchasers, investors or to an entity or person to whom disclosure is required by applicable law or in connection with any action brought to enforce the Lease (as amended).

16. **Signage.** Tenant shall not place any sign upon the Expansion Premises, the 100 Building or the Project or conduct any auction thereon without Landlord’s prior written consent, which consent may be withheld by Landlord in its sole and absolute discretion. Landlord, at Tenant’s sole cost and expense (subject to Tenant’s right to apply such cost against the Expansion Premises Allowance), shall allow Tenant to install (and thereafter maintain) Building-standard signage as follows:
(A) as of the First Expansion Premises Delivery Date (or as soon thereafter as is reasonably practicable), (i) ground floor lobby directory signage for the 100 Building identifying the First Expansion Premises, (ii) a sign panel in the lower-left panel position on the multi-tenant monument sign dedicated to the 100 Building, as depicted on Exhibit G attached hereto, and (iii) suite-entry signage for the First Expansion Premises; and

(B) as of the Second Expansion Premises Delivery Date (or as soon thereafter as is reasonably practicable), (i) ground floor lobby directory signage for the 100 Building identifying the Second Expansion Premises (in addition to the First Expansion Premises), (ii) a sign panel in the lower-right panel position on the multi-tenant monument sign dedicated to the 100 Building, as depicted on Exhibit G attached hereto, and (iii) suite-entry signage for the Second Expansion Premises.

Subject to (i) Landlord’s prior written consent with respect to the size, weight, color(s), materials, design, and manner of installation (which consent shall not be unreasonably withheld), (ii) Tenant first obtaining any and all approvals and/or permits required by the City of Mountain View and (iii) Tenant’s compliance with the conditions, requirements and other criteria established by the City of Mountain View and/or reasonably established by Landlord, from and after the Second Expansion Premises Delivery Date, Tenant shall have the right to maintain a double-length sign panel that spans both the lower-left panel position and lower-right panel position on the multi-tenant monument sign dedicated to the 100 Building. Tenant hereby agrees and acknowledges that neither Landlord nor any agent nor any employee of Landlord has made any representations or warranties with respect to the availability and/or attainability of any permits and/or approvals relating to such double-length sign panel (and/or, if such permits are available and attainable, the time, cost and/or conditions associated with obtaining any such permits and/or approvals).

17. **Consequential Damages.** Notwithstanding anything to the contrary contained in the Lease and/or this Third Amendment, Landlord shall in no event be liable under any circumstances for any injury or damage to, or interference with Tenant’s business, loss of profits or other revenues, loss of business opportunity, loss of goodwill or consequential damages and/or any indirect, incidental, exemplary and/or punitive damages of any kind or nature, in each case, however occurring.

18. **Other Lease Revisions.** Landlord and Tenant agree that, from and after the Effective Date of this Third Amendment (unless different effective date(s) is/are specifically referenced in this section), the Lease shall be amended in the following additional respects:

   (a) **Amortization of Capital Expenditures.** To the extent capital improvements, capital assets and/or any other capital expenditures are permitted to be included in Operating Expenses, then, from and after the Effective Date, the same shall be amortized, over the useful life of the capital item in question (as reasonably determined by Landlord) in accordance with generally accepted accounting practices commonly utilized by landlords of comparable Class “A” office building projects of comparable size as the Project in the Mountain View market, consistently applied, together with interest at the rate of eight and one-half percent (8.5%) per annum, or such higher annual rate as Landlord may actually have to pay, on the unamortized balance.

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(b) **Certified Access Specialist (CASp); Cosmetic Alterations.** Notwithstanding Section 8.1(a) of the Original Lease, with respect to Alterations, unless required by applicable law (and/or Landlord’s lender), Tenant’s architects shall not be required to be certified as a Certified Access Specialist (CASp), and Tenant shall not be required to obtain a CASp report in connect with its Alterations. The following phrase is hereby deemed inserted at the beginning of the last sentence of Section 8.1(d) of the Original Lease: “If required by applicable law (and/or Landlord’s lender), following.........”. Furthermore, the reference to “.....Twenty-five Thousand Dollars ($25,000.00) or less......” in the first grammatical Section 8.1 of the Original Lease is hereby deleted and replaced with “.....Seventy-five Thousand Dollars ($75,000.00) or less (individually or in the annual aggregate)......”.

(c) **Affiliate Transfer—No Recapture.** Notwithstanding anything to the contrary in Article 15 of the Original Lease, assignments or subleases to an Affiliate (as defined in Section 15.8 of the Original Lease) in accordance with the terms and conditions of Section 15.8 of the Original Lease shall not be subject to Landlord’s recapture right in Section 15.3.

(d) **Damage and Destruction—Tenant Termination Right.** The following provision shall be deemed incorporated into Article 11 of the Original Lease:

“11.3 In the event the Premises are (or any portion of the Building necessary for access to or use of the Premises for general office use is) damaged or destroyed by a casualty during the Term, Landlord shall notify Tenant within thirty (30) days after such casualty, or as soon thereafter as is reasonably practicable, of Landlord’s architect’s good-faith estimate of the time needed to perform the restoration of the Premises. If all or substantially all of the Premises are (and/or any portion of the Building necessary for access to or use of all or substantially all of the Premises for general office use is) damaged and destroyed, and the estimated time to perform the restoration thereof exceeds two hundred seventy (270) days from the date permits are obtained (provided that Landlord shall use commercially reasonable efforts to obtain any and all such permits as soon as reasonably practicable), and Landlord has not elected to terminate this Lease under any other provision of this Article 11 above, then Tenant shall have the right to terminate this Lease, provided Tenant’s termination notice is transmitted in writing to Landlord within thirty (30) days after Tenant receives Landlord’s good faith estimate (time being of the essence) of the restoration period relating to such damage and destruction. In the event that Tenant does not exercise such right of termination within the thirty (30) day period set forth in the immediately preceding sentence, Tenant shall be conclusively deemed to have waived its right to terminate this Lease pursuant to this Section 11.3.”

(e) **Modification of Section 18.1(b) of the Original Lease.** Section 18.1(b) of the Original Lease is deleted and replaced with: “Tenant fails to pay any additional rent or other amount of money or charge payable by Tenant hereunder as and when such additional rent or amount or charge becomes due and payable and such failure continues for more than ten (10) days after Landlord gives written notice thereof to Tenant; or”
(f) **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorism, terrorist activities, inability to obtain services, labor, or materials or reasonable substitutes therefore, governmental actions, civil commotions, fire, flood, earthquake or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed upon Tenant with respect to (i) the payment of rent and other charges to be paid by Tenant pursuant to the Lease (as amended), (ii) Article 6 (Use and Environmental Matters) and Article 26 (Holding Over) of the Original Lease and (iii) Exhibit E (Insurance Requirements; Indemnification and Exculpation) attached to this Third Amendment (collectively, a “Force Majeure”), notwithstanding anything to the contrary contained in the Lease and/or this Third Amendment, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party’s performance caused by a Force Majeure.

(g) **Automatic Event of Default—Failure to Timely Deliver Credit Enhancement.** The following shall be deemed incorporated into Article 18 (Events of Default) of the Original Lease as Article 18(i):

“(i) Any failure by Tenant to deliver when due any (x) security deposit, (y) letter of credit (and/or amendment thereto and/or replacement thereof) and/or (z) similar credit enhancement required under this Lease (as the same may be amended).”

19. **Interruption.** Notwithstanding the foregoing, if Tenant is prevented from using (and actually does not use and/or conduct business from) the Premises for a period in excess of seven (7) consecutive business days after Landlord’s receipt of written notice of any such prevention resulting from a failure of heating, ventilation or air conditioning, plumbing, water or electrical service to the Premises, which failure(s) is/are caused by Landlord’s negligence or willful misconduct (and can be corrected through Landlord’s reasonable efforts), and such failure is not due to (i) the fault of the utility supplier or failure of the utility supplier to provide the applicable service, (ii) a cause or event specified in Section 18(f) of this Third Amendment above, (iii) a casualty or condemnation, or (iv) the act or omission of Tenant, its employees, contractors, agents, subtenants and/or invitees, then Tenant shall be entitled to one (1) day of abatement of Base Rent (in proportion to the part of the Premises which is unusable by Tenant in the conduct of its business) for each day from and after the expiration of such seven (7) consecutive business day period that Tenant continues to be prevented from using (and actually does not use and/or conduct business from) such portion of the Premises until the service is restored. The foregoing abatement of Base Rent shall be Tenant’s sole and exclusive remedy upon the occurrence of the events specified above and, except for such abatement, Landlord shall not be liable to Tenant for any loss to Tenant’s business arising from any such event(s), including, but not limited to, any lost profits, loss of business or any other consequential damages resulting therefrom.

20. **Subordination, Non-Disturbance and Attornment.** Landlord hereby represents to Tenant that, as of the Effective Date, there is no existing Security Holder (as defined in the following sentence) with respect to the Project. Tenant agrees that this Lease and the rights of Tenant hereunder shall be subject and subordinate to any and all deeds to secure debt, deeds of trust, security interests, mortgages, master leases, ground leases or other security documents and any and all modifications, renewals, extensions, consolidations and replacements thereof (collectively, “Security Documents” and the holder thereof being a “Security Holder”) which hereafter constitute a lien upon or affect the Project, the Building or the Premises. Such subordination shall be
effective without the necessity of the execution by Tenant of any additional document for the purpose of evidencing or effecting such subordination. Notwithstanding the foregoing, in connection with any future Security Documents, Landlord shall use commercially reasonable efforts to obtain a subordination, non-disturbance and attornment agreement, on the applicable Security Holder's then-standard form (subject to such commercially reasonable modifications as may be requested by Tenant and agreed upon by such Security Holder and Landlord).

21. Quiet Enjoyment. Upon Tenant’s paying the rent due and payable under the Lease (as amended by this Third Amendment and any subsequent amendment(s)) and observing and performing all of the covenants, conditions and provisions on Tenant’s part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the term hereof without hindrance or ejection by any person lawfully claiming under Landlord, subject to the provisions of the Lease (as amended by this Third Amendment and any subsequent amendment(s)) and to the provisions of any (i) covenants, conditions and restrictions now or hereafter affecting the Premises or (ii) Security Documents to which the Lease (as amended) is subordinate or may be subordinated.

22. Effect of Third Amendment; Counterparts. This Third Amendment constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. The submission of this Third Amendment by Landlord, its agent or representative for examination or execution by Tenant does not constitute an option or offer to lease the Expansion Premises upon the terms and conditions contained herein or a reservation of the Expansion Premises in favor of Tenant, it being intended hereby that this Third Amendment shall only become effective upon the execution hereof by Landlord and delivery of a fully executed counterpart hereof to Tenant. Except as modified herein, the terms and provisions of the Lease shall remain unmodified and continue in full force and effect. In the event of any conflict between the terms and provisions of this Third Amendment and the terms and provisions of the Lease, the terms and provisions of this Third Amendment shall prevail. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one agreement. The execution of this Third Amendment may be effected by electronic (such as “DocuSign”), facsimile or portable document format (“.pdf”) signatures, all of which shall be treated as originals. Landlord and Tenant each intends to be bound by its respective facsimile or .pdf transmitted signature, and is aware that the other party will rely thereon, and each party waives any defenses to the enforcement of this Third Amendment based solely on the fact that this Third Amendment was delivered by facsimile or .pdf transmission. Without in any way derogating from, impairing and/or otherwise affecting the terms and conditions of the immediately-preceding sentence, Landlord and Tenant shall deliver original signatures to each other within two (2) business days after the mutual transmittal of the electronic, facsimile or .pdf signatures described in such sentence.

[Signatures Appear on Following Page]
IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment as of the date first set forth above.

**TENANT:**

LIVONGO HEALTH, INC.,
a Delaware corporation

By: /s/ Zane Burke
Its: CEO
Printed Name/Title: Zane Burke

By: /s/ Lee Shapiro
Its: Chief Financial Officer
Printed Name/Title: Lee Shapiro

**LANDLORD:**

MCC CASTRO STATION LLC,
A Delaware limited liability company,

By: McCarthy Cook Ventures XIV LLC,
A Delaware limited liability company,
Its managing member

By: /s/ Edward W. Cook III
Its: Edward W. Cook III
Title: Co-President
<table>
<thead>
<tr>
<th>Name of Subsidiary</th>
<th>Jurisdiction of Incorporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>myStrength, Inc.</td>
<td>Delaware</td>
</tr>
<tr>
<td>Retrofit Inc.</td>
<td>Delaware</td>
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Exhibit 21.1
Subsidiaries of registrant
CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of Livongo Health, Inc. of our report dated May 10, 2019, except for the effects of the reverse stock split discussed in Note 1 to the consolidated financial statements, as to which the date is June 28, 2019 relating to the financial statements, which appears in this Registration Statement. We also consent to the reference to us under the heading “Experts” in such Registration Statement.

/s/ PricewaterhouseCoopers LLP
San Jose, California
June 28, 2019
CONSENT OF INDEPENDENT ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of Livongo Health, Inc. of our report dated April 26, 2019, relating to the financial statements of Retrofit Inc. which appears in this Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ CJBS, LLC

Northbrook, IL
June 27, 2019