FITBIT INC

FORM S-1
(Securities Registration Statement)

Filed 05/07/15

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         SAN FRANCISCO, CA 94105
Telephone 415-513-1000
CIK 0001447599
SIC Code 3571 - Electronic Computers
## UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

### FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

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

Delaware
(State or other jurisdiction of incorporation or organization)

3600
(Primary Standard Industrial Classification Code Number)

20-8920744
(L.R.S. Employer Identification Number)

Fitbit, Inc.
405 Howard Street
San Francisco, California 94105
(415) 513-1000

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

James Park
President and Chief Executive Officer Fitbit, Inc.
405 Howard Street
San Francisco, California 94105
(415) 513-1000

(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 the effective date of this Registration Statement.

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, or Securities Act, 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, 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.

### CALCULATION OF REGISTRATION FEE

<table>
<thead>
<tr>
<th>Title of Each Class of Securities to be Registered</th>
<th>Proposed Maximum Aggregate Offering Price</th>
<th>Amount of Registration Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A common stock, par value $0.0001 per share</td>
<td>$100,000,000</td>
<td>$11,620</td>
</tr>
</tbody>
</table>

(1) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(o) under the Securities Act.
(2) Includes the aggregate offering price of additional shares that the underwriters have the option to purchase 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 shall file a further amendment that specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.
Fitbit, Inc. is offering shares of its Class A common stock and the selling stockholders are offering shares of Class A common stock. We will not receive any proceeds from the sale of shares by the selling stockholders. This is our initial public offering and no public market currently exists for our shares of Class A common stock. We anticipate that the initial public offering price of our Class A common stock will be between $ and $ per share.

We have two classes of common stock, Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock are identical, except voting and conversion rights. Each share of Class A common stock is entitled to one vote. Each share of Class B common stock is entitled to ten votes and is convertible at any time into one share of Class A common stock. The holders of our outstanding Class B common stock will hold approximately % of the voting power of our outstanding capital stock following this offering, with our directors and executive officers and their affiliates holding approximately %.

We intend to apply to list our Class A common stock on the New York Stock Exchange under the symbol “FIT.”

We are an "emerging growth company" as defined under the federal securities laws. Investing in our Class A common stock involves risks. See the section titled "Risk Factors" beginning on page 15.

**PRICE $ A SHARE**

<table>
<thead>
<tr>
<th>Per share</th>
<th>Price to Public</th>
<th>Underwriting Discounts and Commissions (1)</th>
<th>Proceeds to Fitbit</th>
<th>Proceeds to Selling Stockholders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$</td>
<td>$</td>
<td>$</td>
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</tbody>
</table>

(1) See the section titled “Underwriters” for a description of the compensation payable to the underwriters.

We and the selling stockholders have granted the underwriters the right to purchase up to an additional shares of Class A common stock to cover over-allotments.

The Securities and Exchange Commission and state securities 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 Class A common stock to purchasers on , 2015.

**MORGAN STANLEY**  **DEUTSCHE BANK SECURITIES**  **BoA MERRILL LYNCH**

**BARCLAYS**  **RAYMOND JAMES**  **SUNTRUST ROBINSON HUMPHREY**

**PIPER JAFFRAY**  **STIFEL**  **WILLIAM BLAIR**

, 2015
Fitbit helps people lead healthier, more active lives by empowering them with data, inspiration, and guidance to reach their goals.
You should rely only on the information contained in this prospectus and in any free writing prospectus prepared by or on behalf of us and delivered or made available to you. Neither we, the selling stockholders, nor any of the underwriters have authorized anyone to provide you with additional or different information.

We and the selling stockholders are offering to sell, and seeking offers to buy, shares of our Class A common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus or a free writing prospectus is accurate only as of its date, regardless of its time of delivery or of any sale of shares of our Class A common stock. Our business, financial condition, operating results, and prospects may have changed since that date.

Until , 2015 (25 days after commencement of this offering), all dealers that buy, sell, or trade shares of our Class A common stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

For investors outside the United States: Neither we, the selling stockholders, nor any of the underwriters have done anything that would permit this 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 of 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 Class A common stock and the distribution of this prospectus outside of the United States.
PROSPECTUS SUMMARY

This summary highlights information presented in greater detail elsewhere in this prospectus. This summary is not complete and does not contain all the information you should consider before investing in our Class A common stock. You should read the 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 related notes included elsewhere in this prospectus, before investing in our Class A common stock.

FITBIT, INC.

Our Mission

Fitbit helps people lead healthier, more active lives by empowering them with data, inspiration, and guidance to reach their goals.

Overview

Fitbit is transforming the way millions of people around the world achieve their health and fitness goals. The Fitbit platform combines connected health and fitness devices with software and services, including an online dashboard and mobile apps, data analytics, motivational and social tools, personalized insights, and virtual coaching through customized fitness plans and interactive workouts. Our platform helps people become more active, exercise more, sleep better, eat smarter, and manage their weight. Fitbit appeals to a large, mainstream health and fitness market by addressing these key needs with advanced technology embedded in simple-to-use products and services. We pioneered the connected health and fitness market starting in 2007, and since then, we have grown into a leading global health and fitness brand. As of March 31, 2015, we have sold over 20.8 million devices since inception. According to The NPD Group, we held the leading position in the U.S. fitness activity tracker market, with a 68% share, by dollars, in 2014.*

The core of our platform is our family of six wearable connected health and fitness trackers. These wrist-based and “clippable” devices automatically track users’ daily steps, calories burned, distance traveled, floors climbed, and active minutes and display real-time feedback to encourage them to become more active in their daily lives. Most of our trackers also measure sleep duration and quality, and our more advanced products track heart rate and GPS-based information such as speed, distance, and exercise routes. Several of our devices also feature deeper integration with smartphones, such as the ability to receive call and text notifications and control music. In addition, we offer a Wi-Fi connected scale that records weight, body fat, and body mass index, or BMI. We dedicate significant resources to developing proprietary sensors, algorithms, and software to ensure that our products have highly accurate measurements, insightful analytics, compact sizes, durability, and long battery lives. We are able to enhance the functionality and features of our connected devices through wireless updates.

Our platform also includes our online dashboard and mobile apps, which wirelessly and automatically sync with our devices. Our platform allows our users to see trends and achievements, access motivational tools such as virtual badges and real-time progress notifications, and connect, support, and compete with friends and family. Our direct connection with our users enables us to provide personalized insights, premium services, and information about new products and services. Premium services include virtual coaching through customized fitness plans and interactive video-based exercise experiences on mobile devices and computers. In addition, we extend the value of our platform through our open application programming interface, or API, which enables third-party developers to create health and fitness apps that interact with our platform. Our open platform and our large community of users, we have established a growing ecosystem that includes thousands of third-party health and fitness apps that connect with our products and enhance the Fitbit experience.

* See “Industry and Market Data.”
Our platform enables all types of people to get fit their own way, whatever their interests and goals. Our users range from people interested in improving their health and fitness through everyday activities to endurance athletes seeking to maximize their performance. To address this range of needs, we design our devices, apps, and services to be easy to use so that they fit seamlessly into peoples’ daily lives or activities. Our users can sync their Fitbit devices with, and view their dashboard on, their computers and over 150 mobile devices, including iOS, Android, and Windows Phone products. This broad compatibility, combined with our market-leading position, has enabled us to attract what we believe is the largest community of connected health and fitness device users. The size of our user community increases the likelihood that our users will be able to find and engage with friends and family, creating positive network effects that reinforce our growth and user retention. In addition, data from our large community enables us to enhance our product features, provide improved insights, and offer more valuable guidance for our users.

We have rapidly grown to become a leading global health and fitness brand. We sell our products in over 45,000 retail stores and in more than 50 countries, through our retailers’ websites, through our online store at Fitbit.com, and as part of our corporate wellness offering. Our broad distribution and market-leading connected health and fitness platform have driven significant growth since our founding. In 2011, 2012, 2013, and 2014, we had revenue of $14.5 million, $76.4 million, $271.1 million, and $745.4 million, respectively, net income (loss) of $(4.3) million, $(4.2) million, $(51.6) million, and $131.8 million, respectively, and adjusted EBITDA of $(4.0) million, $(2.4) million, $79.0 million, and $191.0 million, respectively. For the three months ended March 31, 2014 and 2015, we had revenue of $108.8 million and $336.8 million, respectively, net income of $8.9 million and $48.0 million, respectively, and adjusted EBITDA of $42.0 million and $93.4 million, respectively. See the section titled “Selected Consolidated Financial and Other Data—Adjusted EBITDA” for information regarding our use of adjusted EBITDA and a reconciliation of adjusted EBITDA to net income (loss). The number of devices we sold grew from 0.2 million in 2011, to 1.3 million in 2012, to 4.5 million in 2013, and to 10.9 million in 2014, and from 1.6 million in the three months ended March 31, 2014 to 3.9 million in the three months ended March 31, 2015. We also had 0.6 million, 2.6 million, 6.7 million, and 9.5 million paid active users as of December 31, 2012, 2013, and 2014, and March 31, 2015, respectively. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Business Metrics” for additional information regarding devices sold and paid active users.
Powerful Trends Driving Our Market

Several powerful trends are driving the growth of the connected health and fitness market:

- **Individuals and employers are increasingly focused on health and fitness.** A variety of factors, such as changing consumer lifestyles and demographics, combined with rising healthcare costs and employers’ increased emphasis on productivity, are leading individuals and employers to increasingly focus on health and fitness. Based on information from industry sources, we estimate consumers spent over $200 billion in 2014 on health and fitness services, such as gym and health club memberships, commercial weight management services, and consumer health products, such as weight management products and dietary supplements. In addition, IBISWorld estimates that the corporate wellness industry will grow from $7.4 billion in 2014 to $10.4 billion in 2018 in the United States. *

- **Advances in technology have enabled the emergence of connected devices.** Recent technological advances in sensors, lower power components, and longer-life batteries, combined with the introduction of wireless standards, such as Bluetooth low energy, have enabled the emergence of connected devices that are smaller, more power-efficient, track a broader range of biometric data, and fit a wide range of consumer preferences.

- **Mobile devices have become the preferred platform for accessing information.** Mobile devices have become the preferred platform for people to access information and manage their lives, as well as the primary hub to connect a variety of consumer devices. According to Gartner, by 2018 more than 50% of users will go to a tablet or smartphone first for all online activities. *

- **More individuals are turning to technology solutions to improve health and fitness.** Individuals are increasingly using mobile apps and other software to improve health and fitness, allowing consumers to directly manage and track their health and fitness in unprecedented ways. According to The NPD Group, over 25% of U.S. consumers reported using a fitness app on their smartphone. *

Our Market Opportunity

According to International Data Corporation, or IDC, consumer spend on the wearable devices market is growing faster than on any segment in the global consumer electronics market. *In 2014, shipments of wearable

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* See “Industry and Market Data.”
devices more than tripled compared to the prior year, reaching a total of 21.0 million units shipped. IDC expects the market for wearable devices will reach 114.0 million units shipped in 2018, representing a $33.7 billion worldwide revenue opportunity. We believe that we have been one of the drivers of the growth of the wearable devices market, and that the future growth of this market represents a significant opportunity for us. Further, as we continue to expand our platform and as consumers increasingly view our connected health and fitness products and services as an alternative or complement to other health and wellness activities, we believe there is an opportunity to extend our addressable market to the broader health and fitness market. Based on information from industry sources, we estimate this market represents an over $200 billion opportunity and includes consumer spend on health and fitness services, such as gym and health club memberships, commercial weight management services, and consumer health products, such as weight management products and dietary supplements. The broader health and fitness market, however, presents several challenges to overcome before we are able to take advantage of this opportunity, including competition from larger, more established traditional health and fitness companies, uncertainty as to whether consumers will adopt our products and services as an alternative or complement to other health and wellness activities, and our relative lack of experience selling other products and services.

Our Solution—The Fitbit Platform

Our leading connected health and fitness platform is designed to enable our users to improve their health and fitness by:

• Tracking activities through our connected health and fitness devices. We empower users to live healthier, more active lifestyles by both tracking the information that matters most to them and providing them with real-time feedback. Our connected health and fitness devices span multiple styles, form factors, and price points, addressing the needs of everyone—from people simply looking to get fit by increasing their activity levels to endurance athletes seeking to maximize their performance.

• Learning through our online dashboard and mobile apps. We offer our users a personalized online dashboard and mobile apps that sync automatically with our connected health and fitness devices and provide our users with a wide range of information and analytics, such as charts and graphs of their progress and the ability to log caloric intake.

• Staying motivated through social features, notifications, challenges, and virtual badges. Our products help millions of users achieve their goals both individually and within the community that they choose. We motivate users by delivering real-time feedback including notifications, leaderboard and challenge updates, and virtual badges. Users can choose to share some or all of their health and fitness information on an opt-in basis with friends, family, and other parties, with third-party apps, and through social networks.

• Improving health and fitness through goal-setting, personalized insights, premium services, and virtual coaching. We believe our platform assists users in changing their daily behavior, such as eating healthier foods or going for a run or walking more to reach a goal or win a challenge. We also offer premium services on a subscription basis that provide personalized insights and virtual coaching through customized fitness plans and interactive video-based exercise experiences on mobile devices and computers.

Our Competitive Strengths—What Sets Us Apart

We believe the following strengths will allow us to maintain and extend our leadership position:

• Leading market position and global brand. Our singular focus on building a connected health and fitness platform, coupled with our leading market share, has led to our brand becoming synonymous
with the connected health and fitness category. According to The NPD Group, Fitbit devices were the highest selling fitness activity trackers in the United States in 2014, with a 68% share of the U.S. fitness activity tracker market, by dollars, up from 58% in 2013.

- **Broad range of connected health and fitness devices.** We believe everyone’s approach to fitness is different, so we offer our users a range of connected health and fitness devices spanning multiple styles, form factors, and price points to allow people to find the devices that fit their lifestyles and goals.

- **Advanced, purpose-built hardware and software technologies.** Our connected health and fitness devices leverage industry-standard technologies, such as Bluetooth low energy, as well as proprietary technologies, such as our PurePulse continuous heart rate tracking, and our algorithms that more accurately measure and analyze user health and fitness metrics. Our online and mobile apps provide in-depth analysis and guidance and our highly-scalable cloud infrastructure enables millions of users around the world to engage with our platform in real-time.

- **Broad mobile compatibility and open API.** Our broad mobile compatibility and open API enable a large and growing health and fitness ecosystem that provides additional value to our existing users and extends our reach to potential new users. Our users can sync their Fitbit devices with, and view their online dashboard on, their computers and over 150 mobile devices, including iOS, Android, and Windows Phone products, which has enabled us to build what we believe is the largest community of connected health and fitness device users.

- **Broad and differentiated go-to-market strategy.** We sell our products in over 45,000 retail stores and in more than 50 countries, through our retailers’ websites, through our online store at Fitbit.com, and as part of our corporate wellness offering. We believe the breadth and depth of our established selling channels and prominent presence in retail stores are unmatched in the connected health and fitness category and would be difficult for a competitor to replicate.

- **Large and growing community and powerful network effects.** The total number of registered users on our platform has grown from 1.1 million as of December 31, 2012, to 4.5 million as of December 31, 2013, to 14.6 million as of December 31, 2014, and to 19.0 million as of March 31, 2015. As our community of users continues to grow, we will develop a deeper understanding of our users and expect to deliver additional value to them through more detailed insights and analysis.

- **Direct relationship and continuous communication with our users.** The connectivity of our devices allows us to better understand our users’ health and fitness goals and communicate the most relevant analysis, features, advice, and content to them throughout the day with our online dashboard, mobile apps, emails, and notifications.

### Our Growth Strategy

We intend to maintain and extend our position as the leading platform for connected health and fitness. Key elements of our growth strategy include:

- **Continue to introduce innovative products.** We will continue to develop the world’s most innovative and diverse connected health and fitness devices and we plan to continue to make significant investments in research and development to further strengthen our platform through both internally-developed and acquired technologies.

- **Introduce new features and services.** We will continue to introduce innovative new features and services to increase user engagement and revenue. For example, we acquired FitStar in March 2015 to enhance our software and services offerings through interactive video-based exercise experiences on mobile devices and computers.

*See “Industry and Market Data.”*
• **Expand brand awareness and drive sales of our products and services.** We intend to increase our marketing efforts to further expand global awareness of our brand and drive greater sales of our products and services.

• **Increase global distribution through select new channels.** We believe that international markets represent a significant growth opportunity for us and we intend to expand sales of our products and services globally through select retailers and strategic partnerships.

• **Further penetrate the corporate wellness market.** We intend to increase our focus on building relationships with employers and wellness providers and increase revenue through employee wellness programs.

**Our Devices**

We believe everyone’s approach to fitness is different, so we have created products with a wide variety of styles, sizes, features, and price points.

- **Fitbit Zip** is our entry-level wireless activity tracker that allows users to track the most important daily activity statistics such as steps, distance, calories burned, and active minutes. Fitbit Zip has a U.S. manufacturer’s suggested retail price, or U.S. MSRP, of $59.95.

- **Fitbit One** is a more advanced clipable wireless tracker that tracks stairs climbed and sleep in addition to daily steps, distance, calories burned, and active minutes. Fitbit One has a U.S. MSRP of $99.95.

- **Fitbit Flex** is our first wristband-style tracker, with a sleek and stylish design, that tracks steps, distance, calories burned, active minutes, and sleep. Fitbit Flex has a U.S. MSRP of $99.95.

- **Fitbit Charge** is a wireless activity and sleep wristband that tracks steps, distance, calories burned, active minutes, floors climbed, and sleep. Fitbit Charge has a U.S. MSRP of $129.95.

- **Fitbit Charge HR** is a wireless heart rate and activity wristband that has all the features available on the Fitbit Charge and also includes our proprietary PurePulse heart rate tracking technology. Fitbit Charge HR has a U.S. MSRP of $149.95.

- **Fitbit Surge** is our fitness “super watch” that combines popular features of a GPS watch, heart rate tracker, activity tracker, and smartwatch. Fitbit Surge has a U.S. MSRP of $249.95.

- **Fitbit Aria** is our Wi-Fi connected scale that tracks weight, body fat percentage, and BMI. Fitbit Aria has a U.S. MSRP of $129.95.

We also sell various accessories, such as colored bands and clips for our devices, charging cables, and Fitbit apparel. These accessories are offered at U.S. MSRPs ranging from $4.95 to $195.00.

**Selected Risks Associated with Our Business**

Our business is subject to a number of risks and uncertainties, including those highlighted in the section titled “Risk Factors” immediately following this prospectus summary. Some of these risks are:

- We operate in a highly competitive market;

- We must be able to anticipate and satisfy consumer preferences in a timely manner;

- We must successfully develop and timely introduce new products and services or enhance existing products and services;

- We must be able to accurately forecast consumer demand for our products and services and adequately manage our inventory;
• Our quarterly operating results or other operating metrics may fluctuate significantly;
• We rely on a limited number of third-party suppliers, contract manufacturers, and logistics providers over which we have limited control;
• The market for connected health and fitness devices is still in the early stages of growth and may not continue to develop;
• An economic downturn or economic uncertainty may adversely affect demand for our products and services;
• Our current and future products and services may experience quality problems from time to time that can result in adverse publicity, product recalls, litigation, regulatory proceedings, and warranty claims;
• We recalled one of our products, the Fitbit Force, in March 2014, due to reports of allergic reactions, which exposed us to U.S. Consumer Product Safety Commission, or CPSC, proceedings and private litigation;
• Material disruption or breach of our information technology systems or those of third-parties could materially damage user and business partner relationships; and
• The dual class structure of our common stock will have the effect of concentrating voting control with certain stockholders, including our directors, executive officers, and significant stockholders who will hold in the aggregate % of the voting power of our capital stock following the completion of this offering, which will limit or preclude your ability to influence corporate matters, including the election of directors, amendments of our organizational documents, and any merger, consolidation, sale of all or substantially all of our assets, or other major corporate transaction requiring stockholder approval.

Corporate Information

We were incorporated in Delaware in March 2007 as Healthy Metrics Research, Inc. We changed our name to Fitbit, Inc. in October 2007. Our principal executive offices are located at 405 Howard Street, San Francisco, California 94105, and our telephone number is (415) 513-1000. Our website address is Fitbit.com. The information on, or that can be accessed through, our website is not incorporated by reference into this prospectus and should not be considered to be a part of this prospectus.

Unless otherwise indicated, the terms “Fitbit,” “the company,” “we,” “us,” and “our” refer to Fitbit, Inc., a Delaware corporation, together with its consolidated subsidiaries.

Fitbit, the Fitbit logo, Fitbit Zip, Fitbit One, Fitbit Flex, Fitbit Charge, Fitbit Charge HR, Fitbit Surge, Fitbit Aria, PurePulse, and our other registered or common law trade names, trademarks, or service marks appearing in this prospectus are our property. This prospectus contains additional trade names, trademarks, and service marks of other companies that are the property of their respective owners.

Implications of Being an Emerging Growth Company

As a company with less than $1.0 billion in revenue during our last completed fiscal year, we qualify as 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:

• an exemption from compliance with the auditor attestation requirement on the effectiveness of our internal control over financial reporting;
• an exemption from compliance with any requirement that the Public Company Accounting Oversight Board may adopt regarding mandatory audit firm rotation or a supplement to the auditor’s report providing additional information about the audit and the financial statements;
• reduced disclosure about our executive compensation arrangements;
• an exemption from the requirements to obtain a non-binding advisory vote on executive compensation or a stockholder approval of any golden parachute arrangements; and
• extended transition periods for complying with new or revised accounting standards.

We will remain an emerging growth company until the earliest to occur of: (i) the end of the first fiscal year in which our annual gross revenue is $1.0 billion or more; (ii) the end of the first fiscal year in which we are deemed to be a “large accelerated filer,” as defined in the Securities Exchange Act of 1934, as amended, or the Exchange Act; (iii) the date on which we have, during the previous three-year period, issued more than $1.0 billion in non-convertible debt securities; and (iv) the end of the fiscal year during which the fifth anniversary of this offering occurs. We may choose to take advantage of some, but not all, of the available benefits under the JOBS Act. We are choosing to irrevocably “opt out” of the extended transition periods available under the JOBS Act for complying with new or revised accounting standards, but we currently intend to take advantage of the other exemptions discussed above. Accordingly, the information contained herein may be different than the information you receive from other public companies in which you hold stock.
THE OFFERING

<table>
<thead>
<tr>
<th>Description</th>
<th>Shares</th>
<th>Details</th>
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</thead>
<tbody>
<tr>
<td>Class A common stock offered by us</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class A common stock offered by the selling stockholders</td>
<td></td>
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</tr>
<tr>
<td>Over-allotment option offered by us and by the selling stockholders</td>
<td></td>
<td>shares (with shares of Class A common stock being offered by us and shares of Class A common stock being offered by the selling stockholders)</td>
</tr>
<tr>
<td>Class A common stock to be outstanding after this offering</td>
<td></td>
<td>shares if the over-allotment option is exercised in full</td>
</tr>
<tr>
<td>Class B common stock to be outstanding after this offering</td>
<td></td>
<td>shares if the over-allotment option is exercised in full</td>
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<tr>
<td>Total Class A and Class B common stock to be outstanding after this offering</td>
<td></td>
<td>shares if the over-allotment option is exercised in full</td>
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We estimate that the net proceeds from the sale of shares of our Class A common stock that we are selling in this offering will be approximately $ million, based upon 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 estimated underwriting discounts and commissions and estimated offering expenses payable by us. We will not receive any proceeds from the sale of shares of our Class A common stock by the selling stockholders.

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

We intend to use the net proceeds that we receive from this offering for working capital and other general corporate purposes, including research and development and sales and marketing activities, general and administrative matters, and capital expenditures. We may also use a portion of the net proceeds to invest in or acquire complementary businesses, products, services, technologies, or other assets. See the section titled “Use of Proceeds” for additional information.
Voting rights

Holders of our Class A common stock and Class B common stock will generally vote together as a single class, unless otherwise required by law or our restated certificate of incorporation. Each share of our Class B common stock will be convertible into one share of our Class A common stock at any time and will convert automatically upon certain transfers and upon the earlier of twelve years from the date of this prospectus or the date the holders of a majority of our Class B common stock elect to convert the Class B common stock to Class A common stock. The holders of our outstanding Class B common stock will hold % of the voting power of our outstanding capital stock following this offering, with our directors and executive officers and their affiliates holding % in the aggregate. These holders will have the ability to control the outcome of matters submitted to our stockholders for approval, including the election of our directors and the approval of any change in control transaction. See the sections titled “Principal and Selling Stockholders” and “Description of Capital Stock” for additional information.

Proposed New York Stock Exchange symbol

“FIT”

The number of shares of our Class A and Class B common stock to be outstanding after this offering is based upon no shares of our Class A common stock and 121,508,763 shares of our Class B common stock outstanding as of March 31, 2015 (prior to the automatic conversion of shares of our Class B common stock into an equivalent number of shares of our Class A common stock upon their sale by the selling stockholders in this offering) and does not include:

- 31,619,974 shares of our Class B common stock issuable upon the exercise of options to purchase shares of our Class B common stock outstanding as of March 31, 2015, with a weighted-average exercise price of $3.29 per share;
- 1,471,063 shares of our Class B common stock issuable upon the exercise of options to purchase shares of our Class B common stock granted after March 31, 2015, with a weighted-average exercise price of $18.85 per share;
- 194,423 shares of our Class B common stock issuable upon the vesting of restricted stock units, or RSUs, outstanding as of March 31, 2015;
- 1,303,328 shares of our Class B common stock issuable upon the exercise of warrants to purchase convertible preferred stock outstanding as of March 31, 2015, with a weighted-average exercise price of $0.89 per share; and
8,397,398 shares of our common stock reserved for future issuance under our equity compensation plans, consisting of:

- 5,897,398 shares of Class B common stock reserved for future issuance under our Amended and Restated 2007 Stock Plan, as amended, or 2007 Plan, as of March 31, 2015 (which reserve does not reflect the options to purchase shares of Class B common stock granted after March 31, 2015); and
- 2,500,000 shares of Class A common stock reserved for future issuance under our 2015 Employee Stock Purchase Plan, or 2015 ESPP, which will become effective on the date of this prospectus.

Any remaining shares available for issuance under our 2007 Plan will become reserved for future issuance as Class A common stock under our 2015 Equity Incentive Plan, or 2015 Plan, which will become effective on the date immediately prior to the date of this prospectus, and we will cease granting awards under the 2007 Plan. Our 2015 Plan and 2015 ESPP also provide for automatic annual increases in the number of shares reserved thereunder. See the section titled “Executive Compensation—Employee Benefit Plans” for additional information.

Except as otherwise indicated, all information in this prospectus assumes:

- the amendment to our amended and restated certificate of incorporation in 2015 to redesignate our outstanding common stock as Class B common stock and create a new class of Class A common stock to be offered and sold in this offering and to effect a -for-split of our capital stock;
- the conversion of all shares of our convertible preferred stock outstanding as of March 31, 2015 into an aggregate of 93,234,322 shares of our Class B common stock immediately prior to the completion of this offering;
- the conversion of all outstanding warrants to purchase shares of convertible preferred stock into warrants to purchase the same number of shares of Class B common stock immediately prior to the completion of this offering;
- the automatic conversion of shares of our Class B common stock into an equivalent number of shares of our Class A common stock upon their sale by the selling stockholders in this offering;
- the filing and effectiveness of our restated certificate of incorporation and the effectiveness of our restated bylaws, each of which will occur immediately prior to the completion of this offering; and
- no exercise by the underwriters of their option to purchase up to an additional shares of our Class A common stock from us and shares of our Class A common stock from the selling stockholders in this offering to cover over-allotments.
SUMMARY CONSOLIDATED FINANCIAL AND OTHER DATA

The following tables summarize our consolidated financial and other data. We derived the summary consolidated statements of operations data for 2012, 2013, and 2014 from our audited consolidated financial statements included elsewhere in this prospectus. We derived the summary consolidated statements of operations data for the three months ended March 31, 2014 and 2015 and the summary consolidated balance sheet data as of March 31, 2015 from our unaudited consolidated financial statements included elsewhere in this prospectus. We have prepared the unaudited consolidated financial statements on the same basis as the audited consolidated financial statements and have included, in our opinion, all adjustments consisting only of normal recurring adjustments that we consider necessary for a fair statement of the financial information set forth in those statements. Our historical results are not necessarily indicative of the results that may be expected in the future. You should read this data together with our consolidated financial statements and related notes appearing elsewhere in this prospectus.

<table>
<thead>
<tr>
<th></th>
<th>As of or For the Year Ended December 31</th>
<th>As of or For the Three Months Ended March 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2012</td>
<td>2013 (1)</td>
</tr>
<tr>
<td><strong>Consolidated Statements of Operations Data:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenue</td>
<td>$76,373</td>
<td>$271,087</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>49,733</td>
<td>210,836</td>
</tr>
<tr>
<td>Gross profit</td>
<td>26,640</td>
<td>60,251</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>16,210</td>
<td>27,873</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>10,237</td>
<td>26,847</td>
</tr>
<tr>
<td>General and administrative</td>
<td>3,968</td>
<td>14,485</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>30,415</td>
<td>69,205</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>(3,775)</td>
<td>(8,954)</td>
</tr>
<tr>
<td>Interest and other income (expense), net</td>
<td>(150)</td>
<td>(4,731)</td>
</tr>
<tr>
<td>Income (loss) before income taxes</td>
<td>(3,925)</td>
<td>(13,685)</td>
</tr>
<tr>
<td>Income tax expense</td>
<td>291</td>
<td>37,937</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$ (4,216)</td>
<td>$ (51,622)</td>
</tr>
<tr>
<td>Net income (loss) per share attributable to common stockholders:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$ (0.17)</td>
<td>$ (1.98)</td>
</tr>
<tr>
<td>Diluted</td>
<td>$ (0.17)</td>
<td>$ (1.98)</td>
</tr>
<tr>
<td>Pro forma net income per share attributable to common stockholders:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$ 1.21</td>
<td>$ 0.48</td>
</tr>
<tr>
<td>Diluted</td>
<td>$ 1.07</td>
<td>$ 0.41</td>
</tr>
<tr>
<td><strong>Other Data:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Devices sold</td>
<td>1,279</td>
<td>4,476</td>
</tr>
<tr>
<td>Paid active users</td>
<td>558</td>
<td>2,570</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$ (2,401)</td>
<td>$ 79,049</td>
</tr>
</tbody>
</table>
In March 2014, we recalled the Fitbit Force. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Fitbit Force Product Recall” for additional information. The recall, which primarily affected our results for the fourth quarter of 2013 and the first quarter of 2014, had the following effect on our income (loss) before income taxes:

<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>2013</td>
<td>2014</td>
</tr>
<tr>
<td>Reduction of revenue</td>
<td>$ (30,607)</td>
<td>$ (8,112)</td>
</tr>
<tr>
<td>Incremental (benefit to) cost of revenue</td>
<td>51,205</td>
<td>11,339</td>
</tr>
<tr>
<td>Impact on gross profit</td>
<td>(81,812)</td>
<td>(19,451)</td>
</tr>
<tr>
<td>Incremental general and administrative expenses (benefit)</td>
<td>2,838</td>
<td>3,389</td>
</tr>
<tr>
<td>Impact on income (loss) before income taxes</td>
<td>$ (84,650)</td>
<td>$ (22,840)</td>
</tr>
</tbody>
</table>

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>2012</td>
<td>2013</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>$ 15</td>
<td>$ 37</td>
</tr>
<tr>
<td>Research and development</td>
<td>62</td>
<td>288</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>29</td>
<td>204</td>
</tr>
<tr>
<td>General and administrative</td>
<td>26</td>
<td>91</td>
</tr>
<tr>
<td>Total</td>
<td>$ 132</td>
<td>$ 620</td>
</tr>
</tbody>
</table>

See notes 2, 3, and 15 of the notes to our consolidated financial statements included elsewhere in this prospectus for an explanation of the calculations of our net income (loss) per share attributable to common stockholders, basic and diluted, and pro forma net income per share attributable to common stockholders, basic and diluted.

Adjusted EBITDA is a financial measure that is not calculated in accordance with generally accepted accounting principles in the United States, or U.S. GAAP. See the section titled “Selected Consolidated Financial and Other Data—Adjusted EBITDA” for information regarding our use of adjusted EBITDA and a reconciliation of adjusted EBITDA to net income (loss).

(1) The pro forma column reflects (a) the redesignation of our outstanding common stock as Class B common stock in 2015, (b) the automatic conversion of all shares of our convertible preferred stock outstanding as of March 31, 2015 into shares of our Class B common stock, (c) the automatic conversion of the convertible preferred stock warrants to Class B common stock warrants, and the resulting reclassification of the redeemable convertible preferred stock warrant liability to additional paid-in capital, and (d) the filing and effectiveness of our restated certificate of incorporation.

(2) The pro forma as adjusted column reflects the items described in footnote (1) and the receipt of $ million in net proceeds from our sale of shares of Class A 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 estimated underwriting discounts and commissions and estimated offering expenses payable by us. A $1.00 increase or decrease in the 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, would increase or decrease our pro forma as adjusted cash and cash equivalents, working capital, total assets, and total stockholders’ equity 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 estimated underwriting discounts and commissions.

(3) The pro forma as adjusted information discussed above is illustrative only and will be adjusted based on the actual public offering price and other terms of our initial public offering that will be determined at pricing.

(4) Subsequent to March 31, 2015, we repaid $160.0 million of our long-term debt from our cash and cash equivalents. As a result, the long-term debt that would have been classified as long-term debt, less current portion, that was repaid was classified as long-term debt, current portion, on our consolidated balance sheet as of March 31, 2015.
An investment in our Class A common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with all of the other information in this prospectus, including the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes, before making a decision to invest in our Class A common stock. Our business, operating results, financial condition, or prospects could be materially and adversely affected by any of these risks and uncertainties. If any of these risks actually occurs, the trading price of our Class A common stock could decline and you might lose all or part of your investment. Our business, operating results, financial performance, or prospects could also be harmed by risks and uncertainties not currently known to us or that we currently do not believe are material.

Risks Related to Our Business

We operate in a highly competitive market. If we do not compete effectively, our prospects, operating results, and financial condition could be adversely affected.

The connected health and fitness devices market is highly competitive, with companies offering a variety of competitive products and services. We expect competition in our market to intensify in the future as new and existing competitors introduce new or enhanced products and services that are potentially more competitive than our products and services. The connected health and fitness devices market has a multitude of participants, including specialized consumer electronics companies, such as Garmin, Jawbone, and Misfit, and traditional health and fitness companies, such as adidas and Under Armour. In addition, many large, broad-based consumer electronics companies either compete in our market or adjacent markets or have announced plans to do so, including Apple, Google, LG, Microsoft, and Samsung. For example, Apple has recently introduced the Apple Watch smartwatch, with broad-based functionalities, including some health and fitness tracking capabilities. We also compete with a wide range of stand-alone health and fitness-related mobile apps that can be purchased or downloaded through mobile app stores. We believe many of our competitors and potential competitors have significant competitive advantages, including longer operating histories, ability to leverage their sales efforts and marketing expenditures across a broader portfolio of products and services, larger and broader customer bases, more established relationships with a larger number of suppliers, contract manufacturers, and channel partners, greater brand recognition, ability to leverage app stores which they may operate, and greater financial, research and development, marketing, distribution, and other resources than we do. Our competitors and potential competitors may also be able to develop products or services that are equal or superior to ours, achieve greater market acceptance of their products and services, and increase sales by utilizing different distribution channels than we do. Some of our competitors may aggressively discount their products and services in order to gain market share, which could result in pricing pressures, reduced profit margins, lost market share, or a failure to grow market share for us. If we are not able to compete effectively against our current or potential competitors, our prospects, operating results, and financial condition could be adversely affected.

If we are unable to anticipate and satisfy consumer preferences in a timely manner, our business may be adversely affected.

Our success depends on our ability to anticipate and satisfy consumer preferences in a timely manner. All of our products are subject to changing consumer preferences that cannot be predicted with certainty. Consumers may decide not to purchase our products and services as their preferences could shift rapidly to different types of connected health and fitness devices or away from these types of products and services altogether, and our future success depends in part on our ability to anticipate and respond to shifts in consumer preferences. In addition, our newer products and services that have additional features, such as the Fitbit Charge, Fitbit Charge HR, and Fitbit Surge, may have higher prices than many of our earlier products and the products of some of our competitors, which may not appeal to consumers or only appeal to a smaller subset of consumers. It is also possible that competitors could introduce new products and services that negatively impact consumer preference for our
If we are unable to successfully develop and timely introduce new products and services or enhance existing products and services, our business may be adversely affected.

We must continually develop and introduce new products and services and improve and enhance our existing products and services to maintain or increase our sales. The success of new or enhanced products and services may depend on a number of factors including, anticipating and effectively addressing consumer preferences and demand, the success of our sales and marketing efforts, timely and successful research and development, effective forecasting and management of product demand, purchase commitments, and inventory levels, effective management of manufacturing and supply costs, and the quality of or defects in our products.

The development of our products and services is complex and costly, and we typically have several products and services in development at the same time. Given the complexity, we occasionally have experienced, and could experience in the future, delays in completing the development and introduction of new and enhanced products and services. Problems in the design or quality of our products or services may also have an adverse effect on our brand, business, financial condition, and operating results. Unanticipated problems in developing products and services could also divert substantial research and development resources, which may impair our ability to develop new products and services and enhancements of existing products and services, and could substantially increase our costs. If new or enhanced product and service introductions are delayed or not successful, we may not be able to achieve an acceptable return, if any, on our research and development efforts, and our business may be adversely affected.

Our operating results could be materially harmed if we are unable to accurately forecast consumer demand for our products and services and adequately manage our inventory.

To ensure adequate inventory supply, we must forecast inventory needs and expenses and place orders sufficiently in advance with our suppliers and contract manufacturers based on our estimates of future demand for particular products. Our ability to accurately forecast demand for our products and services could be affected by many factors, including an increase or decrease in customer demand for our products and services or for products and services of our competitors, product and service introductions by competitors, unanticipated changes in general market conditions, and the weakening of economic conditions or consumer confidence in future economic conditions. Due to the recent rapid growth in demand for our connected health and fitness devices, and particularly in connection with new product introductions, we face challenges acquiring adequate and timely supplies of our products to satisfy the levels of demand, which we believe negatively affects our revenue. This risk may be exacerbated by the fact that we may not carry a significant amount of inventory, either directly or with our contract manufacturers or logistics providers to satisfy short-term demand increases. If we fail to accurately forecast customer demand, we may experience excess inventory levels or a shortage of products available for sale.

Inventory levels in excess of customer demand may result in inventory write-downs or write-offs and the sale of excess inventory at discounted prices, which would cause our gross margin to suffer and could impair the strength of our brand. Conversely, if we underestimate customer demand for our products and services, our contract manufacturers may not be able to deliver products to meet our requirements, and this could result in damage to our brand and customer relationships and adversely affect our revenue and operating results.
Our quarterly operating results or other operating metrics may fluctuate significantly, which could cause the trading price of our Class A common stock to decline.

Our quarterly operating results and other operating metrics have fluctuated in the past and may continue to fluctuate from quarter to quarter. We expect that this trend will continue as a result of a number of factors, many of which are outside of our control and may be difficult to predict, including:

- the level of demand for our connected health and fitness devices and our ability to maintain or increase the size and engagement of our community of users;
- the timing and success of new product and service introductions by us or our competitors or any other change in the competitive landscape of our market;
- the mix of products sold in a quarter;
- the continued market acceptance of, and the growth of the market for, connected health and fitness devices;
- pricing pressure as a result of competition or otherwise;
- delays or disruptions in our supply, manufacturing, or distribution chain;
- errors in our forecasting of the demand for our products, which could lead to lower revenue or increased costs, or both;
- seasonal buying patterns of consumers;
- increases in and timing of sales and marketing and other operating expenses that we may incur to grow and expand our operations and to remain competitive;
- insolvency, credit, or other difficulties faced by our distributors and retailers, affecting their ability to purchase or pay for our products;
- insolvency, credit, or other difficulties confronting our suppliers, contract manufacturers, or logistics providers leading to disruptions in our supply or distribution chain;
- levels of product returns, stock rotation, and price protection rights;
- adverse litigation judgments, settlements, or other litigation-related costs;
- changes in the legislative or regulatory environment, such as with respect to privacy, information security, health and wellness devices, consumer product safety, and advertising;
- product recalls, regulatory proceedings, or other adverse publicity about our products;
- fluctuations in foreign exchange rates;
- costs related to the acquisition of businesses, talent, technologies, or intellectual property, including potentially significant amortization costs and possible write-downs; and
- general economic conditions in either domestic or international markets.

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

The variability and unpredictability of our quarterly operating results or other operating metrics could result in our failure to meet our expectations or those of any analysts that cover us or investors with respect to revenue or other operating results for a particular period. If we fail to meet or exceed such expectations for these or any other reasons, the market price of our Class A common stock could fall substantially, and we could face costly lawsuits, including securities class action suits.
We rely on a limited number of suppliers, contract manufacturers, and logistics providers, and each of our products is manufactured by a single contract manufacturer.

We rely on a limited number of suppliers, contract manufacturers, and logistics providers. In particular, we use contract manufacturers located in Asia, and each of our products is manufactured by a single contract manufacturer. Flextronics is our primary contract manufacturer and is currently the sole manufacturer of the majority of our devices. Our reliance on sole contract manufacturers for each of our products increases our risks since we do not currently have any alternative or replacement manufacturers. In the event of an interruption from a contract manufacturer, we may not be able to develop alternate or secondary sources without incurring material additional costs and substantial delays. Furthermore, these risks could materially and adversely affect our business if one of our contract manufacturers is impacted by a natural disaster or other interruption at a particular location because each of our contract manufacturers produces our products from a single location. In addition, some of our suppliers, contract manufacturers, and logistics providers may have more established relationships with our competitors and potential competitors, and as a result of such relationships, such suppliers, contract manufacturers, and logistics providers may choose to limit or terminate their relationship with us.

If we experience significantly increased demand, or if we need to replace an existing supplier, contract manufacturer, or logistics provider, we may be unable to supplement or replace such supply, contract manufacturing, or logistics capacity on terms that are acceptable to us, which may undermine our ability to deliver our products to customers in a timely manner. For example, for certain of our products, it may take a significant amount of time to identify a contract manufacturer that has the capability and resources to build the product to our specifications in sufficient volume. Identifying suitable suppliers, contract manufacturers, and logistics providers is an extensive process that requires us to become satisfied with their quality control, technical capabilities, responsiveness and service, financial stability, regulatory compliance, and labor and other ethical practices. Accordingly, a loss of any key supplier, contract manufacturer, or logistics provider could adversely impact our revenue and operating results.

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

We have limited control over our suppliers, contract manufacturers, and logistics providers, including aspects of their specific manufacturing processes and their labor, environmental, or other practices, which subjects us to significant risks, including the following:

- inability to satisfy demand for our products;
- reduced control over delivery timing and product reliability;
- reduced ability to oversee the manufacturing process and components used in our products;
- reduced ability to monitor compliance with our product manufacturing specifications;
- reduced ability to develop comprehensive manufacturing specifications that take into account materials shortages, materials substitutions, and variance in the manufacturing capabilities of our third-party contract manufacturers;
- price increases;
- the failure of a key supplier, contract manufacturer, or logistics provider to perform its obligations to us for technical, market, or other reasons;
- difficulties in establishing additional contract manufacturing relationships if we experience difficulties with our existing contract manufacturers;
- shortages of materials or components;
- misappropriation of our intellectual property;
exposure to natural catastrophes, political unrest, terrorism, labor disputes, and economic instability resulting in the disruption of trade from foreign countries in which our products are manufactured;

changes in local economic conditions in countries where our suppliers, contract manufacturers, or logistics providers are located;

the imposition of new laws and regulations, including those relating to labor conditions, quality and safety standards, imports, duties, taxes, and other charges on imports, as well as trade restrictions and restrictions on currency exchange or the transfer of funds; and

insufficient warranties and indemnities on components supplied to our contract manufacturers.

If there are defects in the manufacture of our products by our contract manufacturers, we may face negative publicity, government investigations, and litigation and we may not be fully compensated by our contract manufacturers for any financial or other liability that we suffer as a result.

**Because many of the key components in our products come from limited or sole sources of supply, we are susceptible to supply shortages, long lead times for components, and supply changes, any of which could disrupt our supply chain.**

Many of the key components used to manufacture our products come from limited or sole sources of supply. Our contract manufacturers generally purchase these components on our behalf, subject to certain approved supplier lists, and we do not have any long-term arrangements with our suppliers. We are therefore subject to the risk of shortages and long lead times in the supply of these components and the risk that our suppliers discontinue or modify components used in our products. In addition, the lead times associated with certain components are lengthy and preclude rapid changes in quantities and delivery schedules. We have in the past experienced and may in the future experience component shortages, and the predictability of the availability of these components may be limited. While component shortages have historically been immaterial, they could be material in the future. In the event of a component shortage or supply interruption from suppliers of these components, we may not be able to develop alternate sources in a timely manner. Developing alternate sources of supply for these components may be time-consuming, difficult, and costly and we may not be able to source these components on terms that are acceptable to us, or at all, which may undermine our ability to meet our requirements or to fill our orders in a timely manner. Any interruption or delay in the supply of any of these parts or components, or the inability to obtain these parts or components from alternate sources at acceptable prices and within a reasonable amount of time, would harm our ability to meet our scheduled product deliveries to our customers and users. This could harm our relationships with our channel partners and users and could cause delays in shipment of our products and adversely affect our operating results. In addition, increased component costs could result in lower gross margins. If we are unable to buy these components in quantities sufficient to meet our requirements on a timely basis, we will not be able to deliver products and services to our customers and users.

**The market for connected health and fitness devices is still in the early stages of growth and if it does not continue to grow, grows more slowly than we expect, or fails to grow as large as we expect, our business and operating results would be harmed.**

The market for connected health and fitness devices is relatively new and unproven, and it is uncertain whether connected health and fitness devices will sustain high levels of demand and wide market acceptance. Our success will depend to a substantial extent on the willingness of people to widely adopt these products and services. In part, adoption of our products and services will depend on the increasing prevalence of connected health and fitness devices as well as new entrants to the connected health and fitness device market to raise the profile of both the market as a whole and our own platform. Our connected health and fitness devices have largely been used to measure and track activities such as walking, running, and sleeping. However, they have not been as widely adopted for other sports, exercise, and activities such as cycling, skiing, and swimming for which...
other niche products are more often used. Furthermore, some individuals may be reluctant or unwilling to use connected health and fitness devices because they have concerns regarding the risks associated with data privacy and security. If the wider public does not perceive the benefits of our connected health and fitness devices or chooses not to adopt them as a result of concerns regarding privacy or data security or for other reasons, then the market for these products and services may not further develop, it may develop more slowly than we expect, or it may not achieve the growth potential we expect it to, any of which would adversely affect our operating results. The development and growth of this relatively new market may also prove to be a short-term trend.

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

Our products and services may be considered discretionary items for consumers. Factors affecting the level of consumer spending for such discretionary items include general economic conditions, and other factors, such as consumer confidence in future economic conditions, fears of recession, the availability and cost of consumer credit, levels of unemployment, and tax rates. As global economic conditions continue to be volatile or economic uncertainty remains, trends in consumer discretionary spending also remain unpredictable and subject to reductions. Unfavorable economic conditions may lead consumers to delay or reduce purchases of our products and services, and consumer demand for our products and services may not grow as we expect. Our sensitivity to economic cycles and any related fluctuation in consumer demand for our products and services may have an adverse effect on our operating results and financial condition.

Our current and future products and services may experience quality problems from time to time that can result in adverse publicity, product recalls, litigation, regulatory proceedings, and warranty claims resulting in significant direct or indirect costs, decreased revenue and operating margin, and harm to our brand.

We sell complex products and services that could contain design and manufacturing defects in their materials, hardware, and firmware. These defects could include defective materials or components, or “bugs” that can unexpectedly interfere with the products’ intended operations or cause injuries to users. Although we extensively and rigorously test new and enhanced products and services before their release, there can be no assurance we will be able to detect, prevent, or fix all defects.

Failure to detect, prevent, or fix defects could result in a variety of consequences including greater number of returns of products than expected from users and retailers, regulatory proceedings, product recalls, and litigation, which could harm our revenue and operating results. We generally provide a 45-day right of return for purchases through Fitbit.com and a 12-month warranty on all of our products, except in the European Union, where we provide a two-year warranty on all of our products. The occurrence of real or perceived quality problems or material defects in our current and future products could expose us to warranty claims in excess of our current reserves. As of December 31, 2014, our reserves for warranty claims were $20.1 million, or 3% of our revenue for 2014. Moreover, we offer limited stock rotation rights and price protection to our distributors. If we experience greater returns from retailers or users in excess of our reserves, our business and operating results could be harmed. In addition, any negative publicity related to the perceived quality and safety of our products could also affect our brand and decrease demand for our products and services, and adversely affect our operating results and financial condition.

Furthermore, our products are used to track and display various information about users’ activities, such as daily steps taken, calories burned, distance traveled, floors climbed, active minutes, sleep duration and quality, and heart rate and GPS-based information such as speed, distance, and exercise routes. If our products fail to provide accurate measurements and data to our users, or if there are reports of inaccurate measurements, we may become the subject of negative publicity and our brand, operating results, and business could be harmed.
We recalled the Fitbit Force in March 2014. The recall has exposed us to CPSC regulatory proceedings and extensive litigation in various jurisdictions, including multi-jurisdiction complex federal and state class action and personal injury claims, which required significant management attention and disrupted our business operations, and adversely affected our financial condition, operating results, and our brand.

In March 2014, we recalled one of our products, the Fitbit Force, after some of our users experienced allergic reactions to adhesives in the wristband. These reactions included skin irritation, rashes, and blistering. The recall had a negative impact on our operating results, primarily in our fourth quarter of 2013 and the first quarter of 2014. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Fitbit Force Product Recall” for additional information regarding the financial impact of the recall on our historical operating results. We have provided and are continuing to provide full refunds to consumers who return the Fitbit Force. Users may also exchange their Fitbit Force for a Fitbit Charge. If returns of the Fitbit Force or other costs related to the recall are higher than anticipated, we will be required to increase our reserves related to the recall which would negatively impact our operating results in the future.

The recall is being conducted in conjunction with the CPSC, which has been monitoring recall effectiveness and compliance. In addition to the financial impacts discussed elsewhere in this prospectus, this recall requires us to provide a significant amount of information to the CPSC and to continue to provide reports on an ongoing basis, which takes significant time and internal and external resources. Because the Fitbit Force was primarily sold in the United States, we have not had inquiries from any similar foreign regulatory agencies.

A large number of lawsuits, including multi-jurisdiction complex federal and state class action and personal injury claims, were filed against us relating to the Fitbit Force. We have also had several consumers bring lawsuits relating to our Fitbit Flex product. These litigation matters have required significant attention of our management and resources and disrupted the ordinary course of our business operations. While we have settled all of the class action lawsuits, a number of personal injury claims remain outstanding. While we do not believe that these on-going legal proceedings relating to the Fitbit Force or Fitbit Flex are material, due to the inherent uncertainties of litigation, we cannot accurately predict the ultimate outcome of any such proceedings and these actions or other third-party claims against us will result in the diversion of management time and attention from other aspects of our business and may cause us to incur substantial litigation or settlement costs.

In addition, the CPSC conducted an investigation into the Fitbit Flex and, although it did not find a substantial product hazard in the Fitbit Flex, there can be no assurances that product hazards or other defects will not be found in the future with respect to the Fitbit Flex or our other products. The Fitbit Force product recall, regulatory proceedings, and litigation have had and may continue to have, and any future recalls, regulatory proceedings, and litigation could have an adverse impact on our financial condition, operating results, and brand. Furthermore, because of the global nature of our product sales, in the event we experience defects with respect to products sold outside the United States, we could become subject to recalls, regulatory proceedings, and litigation by foreign governmental agencies and private litigants, which could significantly increase the costs of managing any product issues. Any ongoing and future regulatory proceedings or litigation, regardless of their merits, could further divert management’s attention from our operations and result in substantial legal fees and other costs.

There have been recent reports of small numbers of users of some of our newer products experiencing skin irritations, which could result in additional negative publicity or otherwise harm our business.

Due to the nature of some of our wearable devices, some users have had in the past and may in the future experience skin irritations or other biocompatibility issues not uncommon with jewelry or other wearable products that stay in contact with skin for extended periods of time. Recently, there have been news reports of some users of Fitbit Charge, Fitbit Charge HR, and Fitbit Surge experiencing skin irritations. This negative publicity could harm sales of our products and also adversely affect our relationships with retailers that sell our products, including causing them to be reluctant to continue to sell our products. In addition, if large numbers of users experience these problems, we could be subject to inquiries from the CPSC or other U.S. or foreign
regulatory agencies and face personal injury or class action litigation, any of which could have a material adverse impact on our business, financial condition, and operating results.

**Any material disruption or breach of our information technology systems, such as the five-hour outage we experienced during the peak holiday season in December 2014, or those of third-party partners could materially damage user and business partner relationships, and subject us to significant reputational, financial, legal, and operational consequences.**

We depend on our information technology systems, as well as those of third parties, to develop new products and services, operate our website, host and manage our services, store data, process transactions, respond to user inquiries, and manage inventory and our supply chain. Any material disruption or slowdown of our systems or those of third parties whom we depend upon, including a disruption or slowdown caused by our failure to successfully manage significant increases in user volume or successfully upgrade our or their systems, system failures, viruses, security breaches, or other causes, could cause information, including data related to orders, to be lost or delayed which could—especially if the disruption or slowdown occurred during the holiday season—result in delays in the delivery of products to stores and users or lost sales, which could reduce demand for our merchandise, harm our brand and reputation, and cause our revenue to decline. For example, during the peak holiday season in December 2014, we suffered an approximately five-hour outage of our information systems due to high levels of platform usage, which rendered us unable to process and support new users signing onto our platform during that time. If changes in technology cause our information systems, or those of third parties whom we depend upon, to become obsolete, or if our or their information systems are inadequate to handle our growth, we could lose users and our business and operating results could be adversely affected.

**We collect, store, process, and use personal information and other customer data, which subjects us to governmental regulation and other legal obligations related to privacy, information security, and data protection, and our actual or perceived failure to comply with such obligations could harm our business.**

We collect, store, process, and use personal information and other user data, and we rely on third parties that are not directly under our control to do so as well. Our users’ health and fitness-related data and other highly personal information may include, among other information, names, addresses, phone numbers, email addresses, payment account information, height, weight, and biometric information such as heart rates, sleeping patterns, GPS-based location, and activity patterns. Due to the volume and sensitivity of the personal information and data we manage and the nature of our products, the security features of our platform and information systems are critical. If our security measures, some of which are managed by third parties, are breached or fail, unauthorized persons may be able to obtain access to sensitive user data. If we or our third-party service providers, business partners, or third-party apps with which our users choose to share their Fitbit data were to experience a breach of systems compromising our users’ sensitive data, our brand and reputation could be adversely affected, use of our products and services could decrease, and we could be exposed to a risk of loss, litigation, and regulatory proceedings. Depending on the nature of the information compromised, in the event of a data breach or other unauthorized access to our user data, we may also have obligations to notify users about the incident and we may need to provide some form of remedy, such as a subscription to a credit monitoring service, for the individuals affected by the incident. A growing number of legislative and regulatory bodies have adopted consumer notification requirements in the event of unauthorized access to or acquisition of certain types of personal data. Such breach notification laws continue to evolve and may be inconsistent from one jurisdiction to another. Complying with these obligations could cause us to incur substantial costs and could increase negative publicity surrounding any incident that compromises user data. Our users may also accidentally disclose or lose control of their passwords, creating the perception that our systems are not secure against third-party access. Additionally, if third parties we work with, such as vendors or developers, violate applicable laws, agreements, or our policies, such violations may also put our users’ information at risk and could in turn have an adverse effect on our business. While we maintain insurance coverage that, subject to policy terms and conditions and a significant self-insured retention, is designed to address certain aspects of cyber risks, such insurance coverage may be insufficient to cover all losses or all types of claims that may arise in the continually evolving area of cyber risk.
Our success depends on our ability to maintain our brand. If events occur that damage our brand, our business and financial results may be harmed.

Our success depends on our ability to maintain the value of the “Fitbit” brand. The “Fitbit” name is integral to our business as well as to the implementation of our strategies for expanding our business. Maintaining, promoting, and positioning our brand will depend largely on the success of our marketing and merchandising efforts, our ability to provide consistent, high quality products and services, and our ability to successfully secure, maintain, and defend our rights to use the “Fitbit” and other trademarks important to our brand. Our brand could be harmed if we fail to achieve these objectives or if our public image or brand were to be tarnished by negative publicity. For example, there has been recent media coverage of some of the users of our products reporting skin irritation. We also believe that our reputation and brand may be harmed if we fail to maintain a consistently high level of customer service. Maintaining, protecting, and enhancing our brand may require us to make substantial investments, and these investments may not be successful. If we fail to successfully maintain, promote, and position our brand and protect our reputation or if we incur significant expenses in this effort, our business, financial condition and operating results may be adversely affected.

The failure to effectively manage the introduction of new or enhanced products may adversely affect our operating results.

We must successfully manage introductions of new or enhanced products. Introductions of new or enhanced products could adversely impact the sales of our existing products to retailers and consumers. For instance, retailers often purchase less of our existing products in advance of new product launches. Moreover, consumers may decide to purchase new or enhanced products instead of existing products. This could lead to excess inventory and discounting of our existing products. In addition, we have historically incurred higher levels of sales and marketing expenses accompanying each product introduction. Accordingly, if we fail to effectively manage introductions of new or enhanced products, our operating results would be harmed.

We depend on retailers and distributors to sell and market our products, and our failure to maintain and further develop our sales channels could harm our business.

We primarily sell our products through retailers and distributors and depend on these third-parties to sell and market our products to consumers. Any changes to our current mix of retailers and distributors could adversely affect our gross margin and could negatively affect both our brand image and our reputation. Our sales depend, in part, on retailers adequately displaying our products, including providing attractive space and point of purchase, or POP, displays in their stores, and training their sales personnel to sell our products. If our retailers and distributors are not successful in selling our products, our revenue would decrease and we could experience lower gross margin due to product returns or price protection claims. Our retailers also often offer products and services of our competitors in their stores. In addition, our success in expanding and entering into new markets internationally will depend on our ability to establish relationships with new retailers and distributors. We also sell and will need to continue to expand our sales through online retailers, such as Amazon.com. If we do not maintain our relationship with existing retailers and distributors or develop relationships with new retailers and distributors our ability to sell our products and services could be adversely affected and our business may be harmed.

In 2014 and for the three months ended March 31, 2015, our five largest retailers and distributors accounted for approximately 49% and 54% of our revenue, respectively. Of these retailers and distributors, Wynit Distribution, Best Buy, and Amazon.com accounted for approximately 13%, 12%, and 11% of our revenue for 2014, respectively, and approximately 19%, 10%, and 11% of our revenue for the three months ended March 31, 2015, respectively. Accordingly, the loss of a small number of our large retailers and distributors, or the reduction in business with one or more of these retailers and distributors, could have a significant adverse impact on our operating results. While we have agreements with these large retailers and distributors, these agreements do not require them to purchase any meaningful amount of our products.
Consolidation of retailers or concentration of retail market share among a few retailers may increase and concentrate our credit risk and impair our ability to sell products.

The wearable, fitness, and electronics retail markets in some countries are dominated by a few large retailers with many stores. These retailers have in the past increased their market share and may continue to do so in the future by expanding through acquisitions and construction of additional stores. These situations concentrate our credit risk with a relatively small number of retailers, and, if any of these retailers were to experience a shortage of liquidity, it would increase the risk that their outstanding payables to us may not be paid. In addition, increasing market share concentration among one or a few retailers in a particular country or region increases the risk that if any one of them substantially reduces their purchases of our connected health and fitness devices, we may be unable to find a sufficient number of other retail outlets for our products to sustain the same level of sales. Any reduction in sales by our retailers would adversely affect our revenue, operating results, and financial condition.

The insolvency, credit problems, or other financial difficulties confronting our retailers and distributors could expose us to financial risk.

Some of our retailers and distributors have experienced financial difficulties in the past. The insolvency, credit problems, or other financial difficulties confronting our retailers and distributors could expose us to financial risk. Financial difficulties of our retailers and distributors could impede their effectiveness and also expose us to risks if they are unable to pay for the products they purchase from us. The difficulties of retailers and distributors may also lead to price cuts of our products and adverse effects on our brand and operating results. Any reduction in sales by our current retailers or distributors, loss of large resellers or distributors, or decrease in revenue from our retailers or distributors could adversely affect our revenue, operating results, and financial condition.

We have recently begun to spend significant amounts on advertising and other marketing campaigns to acquire new users, which may not be successful or cost-effective.

We have recently begun to spend significant amounts on advertising and other marketing campaigns, such as television, cinema, print advertising, and social media, as well as increased promotional activities, to acquire new users and we expect our marketing expenses to increase in the future as we continue to spend significant amounts to acquire new users and increase awareness of our products and services. In 2014 and for the three months ended March 31, 2015, advertising expenses were $71.9 million and $21.1 million, respectively, representing approximately 10% and 6% of our revenue, respectively. While we seek to structure our advertising campaigns in the manner that we believe is most likely to encourage people to use our products and services, we may fail to identify advertising opportunities that satisfy our anticipated return on advertising spend as we scale our investments in marketing, accurately predict user acquisition, or fully understand or estimate the conditions and behaviors that drive user behavior. If for any reason any of our advertising campaigns prove less successful than anticipated in attracting new users, we may not be able to recover our advertising spend, and our rate of user acquisition may fail to meet market expectations, either of which could have an adverse effect on our business. There can be no assurance that our advertising and other marketing efforts will result in increased sales of our products and services.

If we continue to grow at a rapid pace, we may not be able to effectively manage our growth and the increased complexity of our business, which could negatively impact our brand and financial performance.

We were founded in 2007 and have expanded our operations rapidly since our inception. Our employee headcount and the scope and complexity of our business have increased significantly, with the number of employees increasing from 222 as of December 31, 2013 to 579 as of March 31, 2015, and we expect headcount growth to continue for the foreseeable future. If our operations continue to grow at a rapid pace, we may experience difficulties in obtaining components for our products in quantities sufficient to meet market demand, as well as delays in production and shipments, as our products are subject to risks associated with third-party sourcing and manufacturing. We could be required to continue to expand our sales and marketing, product development, and distribution functions, to upgrade our management information systems and other processes and technology, and to obtain more space for our expanding workforce. This expansion could increase the strain on our resources, and we
could experience serious operating difficulties, including difficulties in hiring, training, and managing an increasing number of employees. If we do not adapt to meet these evolving challenges, and if the current and future members of our management team do not effectively scale with our growth, we may experience erosion to our brand, the quality of our products and services may suffer, and our corporate culture may be harmed.

Because we have only a limited history operating our business at its current scale, it is difficult to evaluate our current business and future prospects, including our ability to plan for and model future growth. Our limited operating experience at this scale, combined with the rapidly evolving nature of the market in which we sell our products and services, substantial uncertainty concerning how these markets may develop, and other economic factors beyond our control, reduces our ability to accurately forecast quarterly or annual revenue. As such, any predictions about our future revenue and expenses may not be as accurate as they would be if we had a longer operating history or operated in a more developed and predictable market. Failure to manage our future growth effectively could have an adverse effect on our business, which, in turn, could have an adverse impact on our operating results and financial condition.

We may not be able to sustain our revenue growth rate or profitability in the future.

Our recent revenue growth should not be considered indicative of our future performance. As we grow our business, we expect our revenue growth rates to slow in future periods due to a number of reasons, which may include slowing demand for our products and services, increasing competition, a decrease in the growth of our overall market, our failure, for any reason, to continue to capitalize on growth opportunities, or the maturation of our business.

While we achieved profitability in 2014, we have not consistently achieved profitability on a quarterly or annual basis. We expect expenses to increase substantially in the near term, particularly as we make significant investments in our research and development and sales and marketing organizations, expand our operations and infrastructure both domestically and internationally, develop new products and services, and enhance our existing products and services. In addition, in connection with operating as a public company, we will incur additional significant legal, accounting, and other expenses that we did not incur as a private company. If our revenue does not increase to offset these increases in our operating expenses, we may not be profitable in future periods.

To date, we have derived substantially all of our revenue from sales of our connected health and fitness devices, and sales of our subscription-based premium services have historically accounted for less than 1% of our revenue.

To date, substantially all of our revenue has been derived from sales of our connected health and fitness devices, and we expect to continue to derive the substantial majority of our revenue from sales of these devices for the foreseeable future. In each of 2012, 2013, 2014, and the three months ended March 31, 2015, we derived less than 1% of our revenue from sales of our subscription-based premium services. However, in the future we expect to increase sales of subscriptions to these services. Our inability to successfully sell and market our premium services could deprive us of a potentially significant source of revenue in the future. In addition, sales of our premium services may lead to additional sales of our connected health and fitness devices and user engagement with our platform. As a result, our future growth and financial performance may depend, in part, on our ability to sell more subscriptions to our premium services.

Our business is subject to a variety of U.S. and foreign laws and regulations that are continuously evolving, including those related to privacy, data security, and data protection due to our collection, processing, and use of personal information and other user data, such as the U.S.-E.U. Safe Harbor Framework, which covers the transfer of personal data from the European Union to the United States.

We are or may become subject to a variety of laws and regulations in the United States and abroad that involve matters central to our business, including laws and regulations regarding privacy, data protection, data
security, data retention, consumer protection, advertising, electronic commerce, intellectual property, manufacturing, anti-bribery and anti-corruption, and economic or other trade prohibitions or sanctions. These laws and regulations are continuously evolving and developing. The scope and interpretation of the laws that are or may be applicable to us are often uncertain and may be conflicting, particularly with respect to foreign laws.

In particular, there are numerous U.S. federal, state, and local laws and regulations and foreign laws and regulations regarding privacy and the collection, sharing, use, processing, disclosure, and protection of personal information and other user data, the scope of which is changing, subject to differing interpretations, and may be inconsistent among different jurisdictions. We strive to comply with all applicable laws, policies, legal obligations, and industry codes of conduct relating to privacy, data security, and data protection. However, given that the scope, interpretation, and application of these laws and regulations are often uncertain and may be conflicting, it is possible that these obligations may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with other rules or our practices. Any failure or perceived failure to comply with our privacy or security policies or privacy-related legal obligations by us or third-party service-providers or the failure or perceived failure by third-party apps, with which our users choose to share their Fitbit data, to comply with their privacy policies or privacy-related legal obligations as they relate to the Fitbit data shared with them, or any compromise of security that results in the unauthorized release or transfer of personally identifiable information or other user data, may result in governmental enforcement actions, litigation, or negative publicity, and could have an adverse effect on our brand and operating results.

We have certified that we comply with the U.S.-E.U. Safe Harbor Framework as developed by the U.S. Department of Commerce, which provides a method for U.S. companies operating within the European Union to transfer personal data from citizens of E.U. member countries outside the European Union in a way that is consistent with the E.U. Data Protection Directive. If we fail to comply with such framework, we could face legal liability, including fines, negative publicity, and resulting loss of business. In addition, it is possible that the Safe Harbor Framework will be modified or eliminated in the future. If this occurs, we will need to implement alternative methods to comply with E.U. restrictions on the cross-border transfer of personal information.

Governments are continuing to focus on privacy and data security and it is possible that new privacy or data security laws will be passed or existing laws will be amended in a way that is material to our business. Any significant change to applicable laws, regulations, or industry practices regarding our users’ data could require us to modify our services and features, possibly in a material manner, and may limit our ability to develop new products, services, and features. For example, changes in applicable laws and regulations may result in the user data we collect being deemed protected health information, or PHI, under the Health Insurance Portability and Accountability Act of 1996, and the Health Information Technology for Economic and Clinical Health Act. If that were to occur, we would be subject to additional regulation and oversight, any of which could significantly increase our operating costs.

The labeling, distribution, importation, marketing, and sale of our products are subject to extensive regulation by various U.S. state and federal and foreign agencies, including the CPSC, Federal Trade Commission, Food and Drug Administration, or FDA, Federal Communications Commission, and state attorneys general, as well as by various other federal, state, provincial, local, and international regulatory authorities in the countries in which our products and services are distributed or sold. If we fail to comply with any of these regulations, we could become subject to enforcement actions or the imposition of significant monetary fines, other penalties, or claims, which could harm our operating results or our ability to conduct our business.

The global nature of our business operations also create various domestic and foreign regulatory challenges and subject us to laws and regulations such as the U.S. Foreign Corrupt Practices Act, or FCPA, the U.K. Bribery Act, and similar anti-bribery and anti-corruption laws in other jurisdictions, and our products are also subject to U.S. export controls, including the U.S. Department of Commerce’s Export Administration Regulations and various economic and trade sanctions regulations established by the Treasury Department’s Office of Foreign Assets Controls. If we become liable under these laws or regulations, we may be forced to implement new
measures to reduce our exposure to this liability. This may require us to expend substantial resources or to discontinue certain products or services, which would negatively affect our business, financial condition, and operating results. In addition, the increased attention focused upon liability issues as a result of lawsuits, regulatory proceedings, and legislative proposals could harm our brand or otherwise impact the growth of our business. Any costs incurred as a result of compliance or other liabilities under these laws or regulations could harm our business and operating results.

**Our operating margins may decline as a result of increasing product costs.**

Our business is subject to significant pressure on pricing and costs caused by many factors, including intense competition, the cost of components used in our products, labor costs, constrained sourcing capacity, inflationary pressure, pressure from users to reduce the prices we charge for our products and services, and changes in consumer demand. Costs for the raw materials used in the manufacture of our products are affected by, among other things, energy prices, consumer demand, fluctuations in commodity prices and currency, and other factors that are generally unpredictable and beyond our control. Increases in the cost of raw materials used to manufacture our products or in the cost of labor and other costs of doing business in the United States and internationally could have an adverse effect on, among other things, the cost of our products, gross margins, operating results, financial condition, and cash flows.

**We depend on third-party data center service providers. Any disruption in the operation of the data center facilities or failure to renew the services could adversely affect our business.**

Our services are hosted using data centers operated by third parties. We control neither the operation of the data centers nor our third-party data center service providers. We have entered into agreements for the lease of our data centers with third-party data center service providers which expire at various times. The third-party data center service providers may have no obligation to renew their agreements with us on commercially reasonable terms, or at all. If we are unable to renew these agreements on commercially reasonable terms, we may be required to transfer our servers or data to new data center facilities or engage new service providers, and we may incur significant costs and a possible interruption in our platform in connection with doing so.

Problems with our third-party data center service providers, the telecommunications network providers with whom they contract, or with the systems by which telecommunications providers allocate capacity among their users could adversely affect the experience of our users. Our third-party data center service providers could decide to close their facilities or cease providing us services without adequate notice. In addition, any financial difficulties, such as bankruptcy, faced by our third-party data center service providers or parties they contract with may have negative effects on our business, the nature and extent of which are difficult to predict. Additionally, any failure of our data centers to meet our needs for capacity could have an adverse effect on our business. Any changes in third-party service levels at our data centers or any errors, defects, disruptions, or other performance problems with our platform could harm our brand and may damage the data of our users. We have in the past had outages at our data centers, and future interruptions to our platform might reduce our revenue, cause us to issue refunds, subject us to potential liability, or harm our ability to retain users and attract new users.

**Our business is affected by seasonality.**

Our business is affected by the general seasonal trends common to the consumer electronics industry, as well as those common to the fitness industry. Our fourth quarter has typically been our strongest quarter in terms of revenue, reflecting our historical strength in sales during the holiday season. For example, we generated approximately 43%, 40%, and 50% of our full year revenue during the fourth quarters of 2012, 2013, and 2014, respectively. Accordingly, any shortfall in expected fourth quarter revenue would adversely affect our annual operating results. Furthermore, our rapid growth in recent years may obscure the extent to which seasonality trends have affected our business and may continue to affect our business. Accordingly, yearly or quarterly comparisons of our operating results may not be useful and our results in any particular period will not necessarily be indicative of
the results to be expected for any future period. Seasonality in our business can also be impacted by introductions of new or enhanced products and services, including the costs associated with such introductions.

**Our future success depends on the continuing efforts of our key employees, including our founders, James Park and Eric N. Friedman, and on our ability to attract and retain highly skilled personnel and senior management.**

Our future success depends, in part, on our ability to continue to attract and retain highly skilled personnel. In particular, we are highly dependent on the contributions of our co-founders, James Park and Eric N. Friedman, as well as other members of our management team. The loss of any key personnel could make it more difficult to manage our operations and research and development activities, reduce our employee retention and revenue, and impair our ability to compete. Although we have generally entered into employment offer letters with our key personnel, these agreements have no specific duration and provide for at-will employment, which means they may terminate their employment relationship with us at any time.

Competition for highly skilled personnel is often intense, especially in the San Francisco Bay Area where we are located, and we may incur significant costs to attract them. We may not be successful in attracting, integrating, or retaining qualified personnel to fulfill our current or future needs. We have, from time to time, experienced, and we expect to continue to experience, difficulty in hiring and retaining highly skilled employees with appropriate qualifications. In addition, job candidates and existing employees often consider the value of the equity awards they receive in connection with their employment. If the perceived value of our equity or equity awards declines, it may adversely affect our ability to retain highly skilled employees. If we fail to attract new personnel or fail to retain and motivate our current personnel, our business and future growth prospects could be severely harmed.

**Our international operations subject us to additional costs and risks, and our continued expansion internationally may not be successful.**

We have entered into many international markets in a relatively short time and may enter into additional markets in the future. Outside of the United States, we currently have operations in Australia and a number of countries in Asia and Europe. There are significant costs and risks inherent in conducting business in international markets, including:

- establishing and maintaining effective controls at foreign locations and the associated increased costs;
- adapting our technologies, products, and services to non-U.S. consumers’ preferences and customs;
- variations in margins by region;
- increased competition from local providers of similar products;
- longer sales or collection cycles in some countries;
- compliance with foreign laws and regulations;
- compliance with the laws of numerous taxing jurisdictions where we conduct business, potential double taxation of our international earnings, and potentially adverse tax consequences due to U.S. and foreign tax laws as they relate to our international operations;
- compliance with anti-bribery laws, such as the FCPA and the U.K. Bribery Act, by us, our employees, and our business partners;
- complexity and other risks associated with current and future foreign legal requirements, including legal requirements related to consumer protection, consumer product safety, and data privacy frameworks, such as the E.U. Data Protection Directive and the proposed E.U. Data Protection Regulation;
- currency exchange rate fluctuations and related effects on our operating results;
- economic and political instability in some countries, particularly those in China where we have recently expanded;
The uncertainty of protection for intellectual property rights in some countries and practical difficulties of enforcing rights abroad; and

other costs of doing business internationally.

These factors and other factors could harm our international operations and, consequently, materially impact our business, operating results, and financial condition. Further, we may incur significant operating expenses as a result of our international expansion, and it may not be successful. We have limited experience with regulatory environments and market practices internationally, and we may not be able to penetrate or successfully operate in new markets. We may also encounter difficulty expanding into new international markets because of limited brand recognition in certain parts of the world, leading to delayed acceptance of our products and services by users in these new international markets. If we are unable to continue to expand internationally and manage the complexity of our global operations successfully, our financial condition and operating results could be adversely affected.

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

Recent or future changes to U.S., Irish, and other foreign tax laws could impact the tax treatment of our foreign earnings. We generally conduct our international operations through wholly-owned subsidiaries, branches, or representative offices and report our taxable income in various jurisdictions worldwide based upon our business operations in those jurisdictions. Further, we are in the process of implementing an international structure that aligns with our financial and operational objectives as evaluated based on our international markets, expansion plans, and operational needs for headcount and physical infrastructure outside the United States. In connection with the implementation of the international structure, we reorganized the structure of our existing direct and indirect subsidiaries and restructured the intercompany relationships with and amongst the subsidiaries within the company group. Such intercompany relationships are subject to complex transfer pricing regulations administered by taxing authorities in various jurisdictions. Due to changes in the U.S., Irish, and other foreign taxation of such activities, we will likely have to modify our international structure in the future, which will incur costs, may increase our worldwide effective tax rate, and may adversely affect our financial position and operating results.

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

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

Our failure or inability to protect our intellectual property rights could diminish the value of our brand and weaken our competitive position.

We currently rely on a combination of patent, copyright, trademark, trade secret, and unfair competition laws, as well as confidentiality agreements and procedures and licensing arrangements, to establish and protect
our intellectual property rights. We have devoted substantial resources to the development of our proprietary technologies and related processes. In order to protect our proprietary technologies and processes, we rely in part on trade secret laws and confidentiality agreements with our employees, licensees, independent contractors, commercial partners, and other advisors. These agreements may not effectively prevent disclosure of confidential information and may not provide an adequate remedy in the event of unauthorized disclosure of confidential information. We cannot be certain that the steps taken by us to protect our intellectual property rights will be adequate to prevent infringement of such rights by others, including imitation of our products and misappropriation of our brand. Additionally, the process of obtaining patent or trademark protection is expensive and time-consuming, and we may not be able to prosecute all necessary or desirable patent applications or apply for all necessary or desirable trademark applications at a reasonable cost or in a timely manner. We have obtained and applied for U.S. and foreign trademark registrations for the “Fitbit” brand and a variety of our product names, and will continue to evaluate the registration of additional trademarks as appropriate. However, we cannot guarantee that any of our pending trademark or patent applications will be approved by the applicable governmental authorities. Moreover, intellectual property protection may be unavailable or limited in some foreign countries where laws or law enforcement practices may not protect our intellectual property rights as fully as in the United States, and it may be more difficult for us to successfully challenge the use of our intellectual property rights by other parties in these countries.

Costly and time-consuming litigation could be necessary to enforce and determine the scope of our proprietary rights, and our failure or inability to obtain or maintain trade secret protection or otherwise protect our proprietary rights could adversely affect our business. We are and may in the future be subject to patent infringement and trademark claims and lawsuits in various jurisdictions, and we cannot be certain that our products or activities do not violate the patents, trademarks, or other intellectual property rights of third-party claimants. Companies in the technology industry and other patent, copyright, and trademark holders seeking to profit from royalties in connection with grants of licenses own large numbers of patents, copyrights, trademarks, domain names, and trade secrets and frequently commence litigation based on allegations of infringement, misappropriation, or other violations of intellectual property or other rights. As we face increasing competition and gain an increasingly high profile, the intellectual property rights claims against us have grown and will likely continue to grow. From time to time, we have received and may continue to receive letters from third parties that we are infringing upon their intellectual property rights. Our technologies and other intellectual property may not be able to withstand such third-party claims, and successful infringement claims against us could result in significant monetary liability, prevent us from selling some of our products and services, or require us to change our branding. In addition, resolution of claims may require us to redesign our products, license rights from third parties at a significant expense, or cease using those rights altogether. We have also in the past and may in the future bring claims against third parties for infringing our intellectual property rights. Costs of supporting such litigation and disputes may be considerable, and there can be no assurances that a favorable outcome will be obtained. Patent infringement, trademark infringement, trade secret misappropriation, and other intellectual property claims and proceedings brought against us or brought by us, whether successful or not, have in the past and could further result in substantial costs, harm to our brand, and have an adverse effect on our business.

If we are unable to protect our domain names, our brand, business, and operating results could be adversely affected.

We have registered domain names for websites, or URLs, that we use in our business, such as Fitbit.com. If we are unable to maintain our rights in these domain names, our competitors or other third parties could capitalize on our brand recognition by using these domain names for their own benefit. In addition, although we own the “Fitbit” domain name under various global top level domains such as .com and .net, as well as under various country-specific domains, we might not be able to, or may choose not to, acquire or maintain other country-specific versions of the “Fitbit” domain name or other potentially similar URLs. The regulation of domain names in the United States and elsewhere is generally conducted by Internet regulatory bodies and is subject to change. If we lose the ability to use a domain name in a particular country, we may be forced to either incur significant additional expenses to market our solutions within that country, including the development of a
new brand and the creation of new promotional materials, or elect not to sell our solutions in that country. Either result could substantially harm our business and operating results. Regulatory bodies could establish additional top-level domains, appoint additional domain name registrars, or modify the requirements for holding domain names. As a result, we may not be able to acquire or maintain the domain names that utilize the name “Fitbit” in all of the countries in which we currently conduct or intend to conduct business. Further, the relationship between regulations governing domain names and laws protecting trademarks and similar proprietary rights varies among jurisdictions and is unclear in some jurisdictions. Domain names similar to ours have already been registered in the United States and elsewhere, and we may be unable to prevent third parties from acquiring and using domain names that infringe, are similar to, or otherwise decrease the value of, our brand or our trademarks. Protecting and enforcing our rights in our domain names and determining the rights of others may require litigation, which could result in substantial costs, divert management attention, and not be decided favorably to us.

Our use of “open source” software could negatively affect our ability to sell our products and subject us to possible litigation.

A portion of the technologies we use incorporates “open source” software, and we may incorporate open source software in the future. Such open source software is generally licensed by its authors or other third parties under open source licenses. These licenses may subject us to certain unfavorable conditions, including requirements that we offer our products and services that incorporate the open source software for no cost, that we make publicly available source code for modifications or derivative works we create based upon, incorporating, or using the open source software, or that we license such modifications or derivative works under the terms of the particular open source license. Additionally, if a third-party software provider has incorporated open source software into software that we license from such provider, we could be required to disclose or provide at no cost any of our source code that incorporates or is a modification of such licensed software. If an author or other third party that distributes open source software that we use or license were to allege that we had not complied with the conditions of the applicable license, we could be required to incur significant legal expenses defending against such allegations and could be subject to significant damages and enjoined from the sale of our products and services that contained the open source software. Any of the foregoing could disrupt the distribution and sale of our products and services and harm our business.

We may engage in merger and acquisition activities, which could require significant management attention, disrupt our business, dilute stockholder value, and adversely affect our operating results.

As part of our business strategy, we may make investments in other companies, products, or technologies. We may not be able to find suitable acquisition candidates and we may not be able to complete acquisitions on favorable terms, if at all. If we do complete acquisitions, we may not ultimately strengthen our competitive position or achieve our goals, and any acquisitions we complete could be viewed negatively by users or investors. In addition, if we fail to successfully integrate such acquisitions, or the technologies associated with such acquisitions, into our company, the revenue and operating results of the combined company could be adversely affected. For example, we recently acquired FitStar and we may fail to successfully integrate FitStar into our company. Acquisitions, including our acquisition of FitStar, may disrupt our ongoing operations, divert management from their primary responsibilities, subject us to additional liabilities, increase our expenses, and adversely impact our business, financial condition, operating results, and cash flows. We may not successfully evaluate or utilize the acquired technology and accurately forecast the financial impact of an acquisition transaction, including accounting charges. We may have to pay cash, incur debt, or issue equity securities to pay for any such acquisition, each of which could affect our financial condition or the value of our capital stock and could result in dilution to our stockholders. If we incur more debt it would result in increased fixed obligations and could also subject us to covenants or other restrictions that would impede our ability to manage our operations. Additionally, we may receive indications of interest from other parties interested in acquiring some or all of our business. The time required to evaluate such indications of interest could require significant attention from management, disrupt the ordinary functioning of our business, and adversely affect our operating results.

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The Fitbit Aria is subject to FDA regulation, and sales of this product or future regulated products could be adversely affected if we fail to comply with the applicable requirements.

The Fitbit Aria is regulated as a medical device by the FDA and we may have future products that are regulated as medical devices. The medical device industry in the United States is regulated by governmental authorities, principally the FDA and corresponding state regulatory agencies. Before we can market or sell a new regulated product or make a significant modification to an existing medical device in the United States, we must obtain regulatory clearance or approval from the FDA, unless an exemption from pre-market review applies. We received a pre-market clearance for the Fitbit Aria in June 2014. The process of obtaining regulatory clearances or approvals to market a medical device can be costly and time consuming, and we may not be able to obtain these clearances or approvals on a timely basis, or at all, for future products. Any delay in, or failure to receive or maintain, clearance or approval for any medical device products under development could prevent us from generating revenue from these products. Medical devices, including the Fitbit Aria, are also subject to numerous ongoing compliance requirements which can be costly and time consuming. For example, under FDA regulations medical device manufacturers are required to, among other things, (i) establish a quality system to help ensure that their products consistently meet applicable requirements and specifications, (ii) establish and maintain procedures for receiving, reviewing, and evaluating complaints, (iii) establish and maintain a corrective and preventive action procedure, (iv) report certain device-related adverse events and product problems to the FDA, and (v) report to the FDA the removal or correction of a distributed product. If we experience any product problems requiring reporting to the FDA or if we otherwise fail to comply with applicable FDA regulations, we could jeopardize our ability to sell our products and could be subject to enforcement actions such as fines, civil penalties, injunctions, recalls of products, delays in the introduction of products into the market, and refusal of the FDA or other regulators to grant future clearances or approvals, which could harm our reputation, business, operating results, and financial condition.

Our financial performance is subject to risks associated with changes in the value of the U.S. dollar versus local currencies.

Our primary exposure to movements in foreign currency exchange rates relates to non-U.S. dollar denominated sales and operating expenses worldwide. Weakening of foreign currencies relative to the U.S. dollar adversely affects the U.S. dollar value of our foreign currency-denominated sales and earnings, and generally leads us to raise international pricing, potentially reducing demand for our products. In some circumstances, for competitive or other reasons, we may decide not to raise local prices to fully offset the dollar’s strengthening, or at all, which would adversely affect the U.S. dollar value of our foreign currency denominated sales and earnings. Conversely, a strengthening of foreign currencies relative to the U.S. dollar, while generally beneficial to our foreign currency-denominated sales and earnings, could cause us to reduce international pricing and incur losses on our foreign currency derivative instruments, thereby limiting the benefit. Additionally, strengthening of foreign currencies may also increase our cost of product components denominated in those currencies, thus adversely affecting gross margins.

We use derivative instruments, such as foreign currency forward and option contracts, to hedge certain exposures to fluctuations in foreign currency exchange rates. The use of such hedging activities may not offset any, or more than a portion, of the adverse financial effects of unfavorable movements in foreign exchange rates over the limited time the hedges are in place.

The 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, we cannot assure you our business will grow at similar rates, if at all.

Growth forecasts are subject to significant uncertainty and are based on assumptions and estimates that may not prove to be accurate. The forecasts in this prospectus relating to the expected growth in the market for health and fitness tracking devices, wearable devices, and the health and fitness industry may prove to be inaccurate. Even if these markets experience the forecasted growth described in this prospectus, we may not grow our business at similar rates, or at all. Our growth is subject to many factors, including our success in implementing
our business strategy, which is subject to many risks and uncertainties. Accordingly, the forecasts of market growth included in this prospectus should not be taken as indicative of our future growth.

Our revolving credit facilities provide our lenders with first-priority liens against substantially all of our assets, including our intellectual property, and contain financial covenants and other restrictions on our actions, which could limit our operational flexibility and otherwise adversely affect our financial condition.

In August 2014, we amended and restated our existing revolving credit facility and entered into a new revolving credit and guarantee agreement to incur additional indebtedness. Our credit agreements restrict our ability to, among other things:

- use our accounts receivable, inventory, trademarks, and most of our other assets as security in other borrowings or transactions;
- incur additional indebtedness;
- sell certain assets;
- guarantee certain obligations of third parties;
- declare dividends or make certain distributions; and
- undergo a merger or consolidation or other transactions.

Our credit agreements also prohibit us from exceeding a consolidated fixed charge coverage ratio and require us to maintain a minimum liquidity reserve. Our ability to comply with these and other covenants is dependent upon a number of factors, some of which are beyond our control.

Our failure to comply with the covenants or payment requirements or the occurrence of other events specified in our credit agreements could result in an event of default under the credit agreements, which would give our lenders the right to terminate their commitments to provide additional loans under the credit agreements and to declare all borrowings outstanding, together with accrued and unpaid interest and fees, to be immediately due and payable. In addition, we have granted our lenders first-priority liens against all of our assets, including our intellectual property, as collateral. Failure to comply with the covenants or other restrictions in the credit facilities could result in a default. If the debt under our credit agreements was to be accelerated, we may not have sufficient cash on hand or be able to sell sufficient collateral to repay it, which would have an immediate adverse effect on our business and operating results. This could potentially cause us to cease operations and result in a complete loss of your investment in our Class A common stock.

We may need to raise additional capital required to grow our business, and we may not be able to raise capital on terms acceptable to us or at all.

Growing and operating our business will require significant cash outlays and capital expenditures and commitments. If cash on hand and cash from operating activities are not sufficient to meet our cash requirements, we will need to seek additional capital, potentially through debt or equity financing, to fund our growth. We may not be able to raise needed cash on terms acceptable to us or at all. Financing may be on terms that are dilutive or potentially dilutive to our stockholders, and the prices at which new investors would be willing to purchase our securities may be lower than the current price per share of our Class A common stock. The holders of new securities may also have rights, preferences, or privileges which are senior to those of existing holders of common stock. If new sources of financing are required, but are insufficient or unavailable, we will be required to modify our growth and operating plans based on available funding, if any, which would harm our ability to grow our business.

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 will be subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, and the rules and regulations of the applicable listing standards of
the New York Stock Exchange. 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 Securities and Exchange Commission, or 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. 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.

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 operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods. Any failure to implement and maintain effective internal control over financial reporting 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 Class A common stock. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on the New York Stock Exchange. 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 a material and adverse effect on our business and operating results and could cause a decline in the price of our Class A common stock.

Our management team has limited experience managing a public company.

Most members of our management team have limited experience managing a publicly-traded company, interacting with public company investors, and complying with the increasingly complex laws pertaining to public companies. Our management team may not successfully or efficiently manage our transition to being a public company subject to significant regulatory oversight and reporting obligations under the federal securities laws and the continuous scrutiny of securities analysts and investors. These new obligations and constituents will require significant attention from our senior management and could divert their attention away from the day-to-day management of our business, which could adversely affect our business, financial condition, and operating results.
Our business is subject to the risk of earthquakes, fire, power outages, floods, and other catastrophic events, and to interruption by manmade problems such as terrorism.

Our business is vulnerable to damage or interruption from earthquakes, fires, floods, power losses, telecommunications failures, terrorist attacks, acts of war, human errors, break-ins, and similar events. The third-party systems and operations and contract manufacturers we rely on, such as the data centers we lease, are subject to similar risks. For example, a significant natural disaster, such as an earthquake, fire, or flood, could have an adverse effect on our business, operating results, and financial condition, and our insurance coverage may be insufficient to compensate us for losses that may occur. Our corporate offices and one of our data center facilities are located in California, a state that frequently experiences earthquakes. In addition, the facilities at which our contract manufacturers manufacture our products are located in parts of Asia that frequently endure typhoons and earthquakes. Acts of terrorism, which may be targeted at metropolitan areas that have higher population density than rural areas, could also cause disruptions in our or our suppliers’, contract manufacturers’, and logistics providers’ businesses or the economy as a whole. Our servers may also be vulnerable to computer viruses, break-ins, denial-of-service attacks, and similar disruptions from unauthorized tampering with our computer systems, which could lead to interruptions, delays, and loss of critical data. We may not have sufficient protection or recovery plans in some circumstances, such as natural disasters affecting California or other locations where we have data centers or store significant inventory of our products. As we rely heavily on our data center facilities, computer and communications systems, and the Internet to conduct our business and provide high-quality customer service, these disruptions could negatively impact our ability to run our business and either directly or indirectly disrupt suppliers’ businesses, which could have an adverse effect on our business, operating results, and financial condition.

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

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, as provided in “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 revenue recognition, inventories, product warranty reserves, the Fitbit Force recall, accounting for income taxes, fair value of redeemable convertible preferred stock warrant liability, and stock-based compensation expense. Our operating results may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our operating results to fall below the expectations of securities analysts and investors, resulting in a decline in the price of our Class A common stock.

We are an “emerging growth company” and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our Class A common stock less attractive to investors.

We are an “emerging growth company,” as defined in the JOBS Act, and we intend to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not “emerging growth companies,” including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We may take advantage of these exemptions for so long as we are an “emerging growth company,” which could be as long as five years following the completion of this offering but we expect to not be an “emerging growth company” sooner. We cannot predict if investors will find our Class A common stock less
attractive because we will rely on these exemptions. If some investors find our Class A common stock less attractive as a result, there may be a less active trading market for our Class A common stock and the price of our Class A common stock may be more volatile.

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

As a public company, we will be subject to requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which will require us to conduct due diligence on and disclose whether or not our products 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 products. 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 minerals that may be used or necessary to the production of our products and, if applicable, potential changes to products, processes, or sources of supply as a consequence of such due diligence activities. It is also possible that we may face reputational harm if we determine that certain of our products contain minerals not determined to be conflict free or if we are unable to alter our products, processes, or sources of supply to avoid such materials.

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

There has been no prior public market for our Class A common stock, the stock price of our Class A common stock may be volatile or may decline regardless of our operating performance, and you may not be able to resell your shares at or above the initial public offering price.

There has been no public market for our Class A common stock prior to this offering. The initial public offering price for our Class A common stock will be determined through negotiations among the underwriters, us, and the selling stockholders and may vary from the market price of our Class A common stock following this offering. The market prices of the securities of newly public companies such as us have historically been highly volatile. The market price of our Class A common stock may fluctuate significantly in response to numerous factors, many of which are beyond our control, including:

- overall performance of the equity markets;
- actual or anticipated fluctuations in our revenue and other operating results;
- changes in the financial projections we may provide to the public or our failure to meet these projections;
- failure of securities analysts to initiate or maintain coverage of us, changes in financial estimates by any securities analysts who follow our company, or our failure to meet these estimates or the expectations of investors;
- recruitment or departure of key personnel;
- the economy as a whole and market conditions in our industry;
- negative publicity related to problems in our manufacturing or the real or perceived quality of our products, as well as the failure to timely launch new products that gain market acceptance;
- rumors and market speculation involving us or other companies in our industry;
- announcements by us or our competitors of significant technical innovations, acquisitions, strategic partnerships, joint ventures, or capital commitments;
- new laws or regulations or new interpretations of existing laws or regulations applicable to our business;
- lawsuits threatened or filed against us;
- other events or factors, including those resulting from war, incidents of terrorism, or responses to these events;
the expiration of contractual lock-up or market standoff agreements; and

• sales of shares of our Class A common stock by us or our stockholders.

In addition, the stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. Stock prices of many companies have fluctuated in a manner unrelated or disproportionate to the operating performance of those companies. In the past, stockholders have instituted securities class action litigation following periods of market volatility. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our business, and adversely affect our business.

Sales of substantial amounts of our Class A common stock in the public markets, or the perception that they might occur, could cause the market price of our Class A common stock to decline.

Sales of a substantial number of shares of our Class A common stock into the public market, particularly sales by our directors, executive officers, and principal stockholders, or the perception that these sales might occur, could cause the market price of our Class A common stock to decline.

Substantially all of our securities outstanding prior to this offering, other than the shares offered by our selling stockholders, which will be freely tradable following this offering, are currently restricted from resale as a result of lock-up and market standoff agreements. See the section titled “Shares Eligible for Future Sale” for additional information. These securities will become available to be sold 181 days after the date of this prospectus. Morgan Stanley & Co. LLC may, in its discretion, permit our security holders to sell shares prior to the expiration of the restrictive provisions contained in the lock-up agreements. Shares held by directors, executive officers, and other affiliates will also be subject to volume limitations under Rule 144 under the Securities Act and various vesting agreements.

In addition, as of March 31, 2015, we had options outstanding that, if fully exercised, would result in the issuance of 31,619,974 shares of Class B common stock. We also had 194,423 RSUs outstanding as of March 31, 2015. All of the shares of Class B common stock issuable upon the exercise of stock options or settlement of RSUs, and the shares reserved for future issuance under our equity incentive plans, will be registered for public resale under the Securities Act. Accordingly, these shares will be able to be freely sold in the public market upon issuance subject to existing lock-up or market standoff agreements and applicable vesting requirements.

Immediately following this offering, the holders of shares of our Class B common stock have rights, subject to some conditions, to require us to file registration statements for the public resale of the Class A common stock issuable upon conversion of such shares or to include such shares in registration statements that we may file for us or other stockholders.

The dual class structure of our common stock will have the effect of concentrating voting control with those stockholders who held our capital stock prior to the completion of this offering, including our directors, executive officers, and significant stockholders who will hold in the aggregate % of the voting power of our capital stock following the completion of this offering. This will limit or preclude your ability to influence corporate matters, including the election of directors, amendments of our organizational documents, and any merger, consolidation, sale of all or substantially all of our assets, or other major corporate transaction requiring stockholder approval.

Our Class B common stock has ten votes per share, and our Class A common stock, which is the stock we are offering in this offering, has one vote per share. Following this offering, our directors, executive officers, and holders of more than 5% of our common stock, and their respective affiliates, will hold in the aggregate % of the voting power of our capital stock. Because of the ten-to-one voting ratio between our Class B and Class A common stock, the holders of our Class B common stock collectively will continue to control a majority of the
combined voting power of our common stock and therefore be able to control all matters submitted to our stockholders for approval until the earlier of twelve years from the date of this prospectus or the date the holders of a majority of our Class B common stock choose to convert their shares. This concentrated control will limit or preclude your ability to influence corporate matters for the foreseeable future, including the election of directors, amendments of our organizational documents, and any merger, consolidation, sale of all or substantially all of our assets, or other major corporate transaction requiring stockholder approval. In addition, this may prevent or discourage unsolicited acquisition proposals or offers for our capital stock that you may feel are in your best interest as one of our stockholders.

Future transfers by holders of Class B common stock will generally result in those shares converting to Class A common stock, subject to limited exceptions, such as certain transfers effected for estate planning purposes. The conversion of Class B common stock to Class A common stock will have the effect, over time, of increasing the relative voting power of those holders of Class B common stock who retain their shares in the long term. See the section titled “Description of Capital Stock—Anti-Takeover Provisions” for additional information.

If securities or industry analysts do not publish research, or publish inaccurate or unfavorable research, about our business, the price of our Class A common stock and trading volume could decline.

The trading market for our Class A common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business. Securities and industry analysts do not currently, and may never, publish research on our company. If few securities analysts commence coverage of us, or if industry analysts cease coverage of us, the trading price for our common stock would be negatively affected. If one or more of the analysts who cover us downgrade our Class A common stock or publish inaccurate or unfavorable research about our business, our common stock price would likely decline. If one or more of these analysts cease coverage of us or fail to publish reports on us regularly, demand for our Class A common stock could decrease, which might cause our Class A common stock price and trading volume to decline.

Because the initial public offering price of our Class A common stock will be substantially higher than the pro forma net tangible book value per share of our outstanding common stock following this offering, new investors will experience immediate and substantial dilution.

The initial public offering price is substantially higher than the pro forma 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 Class A common stock in this offering, based on the midpoint of the price range set forth on the cover page of this prospectus, and the issuance of shares of Class A common stock in this offering, you will experience immediate dilution of $ per share, the difference between the price per share you pay for our Class A common stock and its pro forma net tangible book value per share as of March 31, 2015. See the section titled “Dilution” for additional information.

We will have broad discretion in the use of the net proceeds to us from this offering and may not use them effectivley.

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. The failure by our management to apply these funds effectively could harm our business. 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 to our stockholders. These investments may not yield a favorable return to our investors.
We do not intend to pay dividends for the foreseeable future.

We have never declared or paid any cash dividends on our common stock and do not intend to pay any cash dividends in the foreseeable future. We anticipate that we will retain all of our future earnings for use in the development of our business and for general corporate purposes. Any determination to pay dividends in the future will be at the discretion of our board of directors. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments. In addition, our credit facilities contain restrictions on our ability to pay dividends.

Provisions in our charter documents and under Delaware law could make an acquisition of our company more difficult, limit attempts by our stockholders to replace or remove our current management, limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers, or employees, and limit the market price of our common stock.

Provisions in our restated certificate of incorporation and restated bylaws that will be in effect immediately following the completion of this offering may have the effect of delaying or preventing a change of control or changes in our management. Our restated certificate of incorporation and restated bylaws include provisions that:

- provide that our board of directors will be classified into three classes of directors with staggered three-year terms;
- permit the board of directors to establish the number of directors and fill any vacancies and newly-created directorships;
- require super-majority voting to amend some provisions in our restated certificate of incorporation and restated bylaws;
- authorize the issuance of “blank check” preferred stock that our board of directors could use to implement a stockholder rights plan;
- provide that only the chairman of our board of directors, our chief executive officer, or a majority of our board of directors will be authorized to call a special meeting of stockholders;
- provide for a dual class common stock structure in which holders of our Class B common stock have the ability to control the outcome of matters requiring stockholder approval, even if they own significantly less than a majority of the outstanding shares of our Class A and Class B common stock, including the election of directors and significant corporate transactions, such as a merger or other sale of our company or its assets;
- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- provide that the board of directors is expressly authorized to make, alter, or repeal our bylaws; and
- establish advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon by stockholders at annual stockholder meetings.

In addition, our restated certificate of incorporation will provide that the Court of Chancery of the State of Delaware will be the exclusive forum for: any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our restated certificate of incorporation, or our restated bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. This choice of forum provision may limit a stockholder’s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, or other employees, which may discourage lawsuits with respect to such claims. Alternatively, if a court were to find the choice of forum provision contained in our restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, operating results, and financial condition.
Moreover, Section 203 of the Delaware General Corporation Law may discourage, delay, or prevent a change in control of our company. Section 203 imposes certain restrictions on mergers, business combinations, and other transactions between us and holders of 15% or more of our common stock. See the section titled “Description of Capital Stock” for additional information.
SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements within the meaning of the federal securities laws. All statements contained in this prospectus other than statements of historical fact, including statements regarding our future operating results and financial position, our business strategy and plans, and our objectives for future operations, are forward-looking statements. The words “believe,” “may,” “will,” “estimate,” “continue,” “anticipate,” “intend,” “expect,” “plan,” and similar expressions are intended to identify forward-looking statements.

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, operating results, and prospects. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties, and other factors, including those discussed 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 or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make in 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 and adversely from those described or anticipated 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.
INDUSTRY AND MARKET DATA

This prospectus contains statistical data, estimates, and forecasts that are based on independent industry publications or reports or other publicly available information, as well as other information based on our internal sources. This information involves a number of assumptions and limitations, are subject to risks and uncertainties, and are subject to change based on various factors, including those discussed in the section titled “Risk Factors” and elsewhere in this prospectus. These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

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

- The NPD Group, Inc., Monthly Retail Tracking Service, *Digital Fitness Devices* data, February 26, 2015. The NPD Group data refers to full body activity trackers which we refer to as fitness activity trackers elsewhere in this prospectus.
USE OF PROCEEDS

We estimate that the net proceeds from the sale of shares of our Class A common stock that we are selling in this offering will be approximately $\text{million}, based on an assumed initial public offering price of $\text{per share}, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. If the underwriters’ option to purchase additional shares to cover over-allotments is exercised in full, we estimate that our net proceeds would be approximately $\text{million}, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We will not receive any proceeds from the sale of shares of our Class A common stock by the selling stockholders.

A $1.00 increase or decrease in the assumed initial public offering price of $\text{per share} would increase or decrease the net proceeds that we receive from this offering by approximately $\text{million}, assuming that the number of shares of Class A common stock offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions.

The principal purposes of this offering are to increase our capitalization and financial flexibility, create a public market for our Class A common stock, and enable access to the public equity markets for us and our stockholders. We intend to use the net proceeds that we receive from this offering for working capital and other general corporate purposes, including research and development and sales and marketing activities, general and administrative matters, and capital expenditures. We may also use a portion of the net proceeds to invest in or acquire complementary businesses, products, services, technologies, or other assets.

We currently have no specific plans for the use of the net proceeds that we receive from this offering. Accordingly, we will have broad discretion in using these proceeds. Pending their use as described above, we plan to invest the net proceeds in short-term, interest-bearing obligations, investment-grade instruments, certificates of deposit, or direct or guaranteed obligations of the U.S. government.

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 cash dividends on our common stock for the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our board of directors, subject to applicable laws, and will depend on our financial condition, operating results, capital requirements, general business conditions, and other factors that our board of directors considers relevant. In addition, the terms of our credit facilities contain restrictions on our ability to declare and pay cash dividends on our capital stock.
The following table sets forth our cash and cash equivalents and capitalization as of March 31, 2015 on:

• an actual basis;

• a pro forma basis to give effect to (i) the redesignation of our outstanding common stock as Class B common stock in 2015, (ii) the automatic conversion of all shares of our convertible preferred stock outstanding as of March 31, 2015 into 93,234,322 shares of our Class B common stock, (iii) the automatic conversion of the convertible preferred stock warrants to Class B common stock warrants, and the resulting remeasurement and assumed reclassification of the redeemable convertible preferred stock warrant liability to additional paid-in capital, and (iv) the filing and effectiveness of our restated certificate of incorporation; and

• a pro forma as adjusted basis to give effect to (i) the adjustments described above as well as the sale and issuance of the shares of our Class A common stock offered by us in this offering based upon 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 estimated underwriting discounts and commissions and estimated offering expenses payable by us and (ii) the automatic conversion of shares of our Class B common stock into an equivalent number of shares of our Class A common stock upon their sale by the selling stockholders in this offering.
The pro forma as adjusted information below is illustrative only, and our cash and cash equivalents, additional paid-in capital, total stockholders’ equity, and total capitalization following the completion of this offering will be adjusted based on the actual initial public offering price and other terms of the offering determined at the pricing of this offering. You should read this table together with our consolidated financial statements and related notes, and the sections titled “Selected Consolidated Financial and Other Data” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” each included elsewhere in this prospectus.

<table>
<thead>
<tr>
<th></th>
<th>Actual</th>
<th>Pro Forma As Adjusted</th>
<th>Pro Forma As Adjusted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands, except share and per share data)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$237,849</td>
<td>$237,849</td>
<td>$237,849</td>
</tr>
<tr>
<td>Redeemable convertible preferred stock warrant liability</td>
<td>$159,611</td>
<td>$159,611</td>
<td>$159,611</td>
</tr>
<tr>
<td>Redeemable convertible preferred stock, $0.0001 par value per share: 96,352,608 shares authorized, 93,234,322 shares issued and outstanding, actual; no shares authorized, issued, and outstanding, pro forma or pro forma as adjusted</td>
<td>26,132</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stockholders’ equity:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preferred stock, $0.0001 par value per share: no shares authorized, issued, and outstanding, actual; shares authorized, no shares issued and outstanding pro forma and pro forma as adjusted</td>
<td>67,814</td>
<td>67,814</td>
<td>67,814</td>
</tr>
<tr>
<td>Common stock, $0.0001 par value per share: 163,600,000 shares authorized, 28,274,441 shares issued and outstanding, actual; no shares authorized, issued, and outstanding pro forma and pro forma as adjusted</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Class A common stock, $0.0001 par value per share: no shares authorized, issued, and outstanding, actual; shares authorized, no shares issued and outstanding, pro forma; shares issued and outstanding, pro forma as adjusted</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class B common stock, $0.0001 par value per share: no shares authorized, issued, and outstanding, actual; shares authorized, 121,508,763 shares issued and outstanding, pro forma; shares issued and outstanding, pro forma as adjusted</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>26,583</td>
<td>120,520</td>
<td>120,520</td>
</tr>
<tr>
<td>Accumulated other comprehensive income</td>
<td>81</td>
<td>81</td>
<td>81</td>
</tr>
<tr>
<td>Retained earnings</td>
<td>115,239</td>
<td>115,239</td>
<td>115,239</td>
</tr>
<tr>
<td>Total stockholders’ equity</td>
<td>141,906</td>
<td>235,852</td>
<td>235,852</td>
</tr>
<tr>
<td>Total capitalization</td>
<td>$395,463</td>
<td>$395,463</td>
<td>$395,463</td>
</tr>
</tbody>
</table>

(1) A $1.00 increase or decrease in the 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, would increase or decrease our pro forma as adjusted cash and cash equivalents, additional paid-in capital, total stockholders’ equity, and total capitalization 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 estimated underwriting discounts and commissions. If the underwriters’ option to purchase additional shares to cover overallocations is exercised in full, the pro forma as adjusted amount of each of cash and cash equivalents, additional paid-in-capital, total stockholders’ equity, and total capitalization would increase by approximately $ million, after deducting estimated underwriting discounts and commissions, and we would have shares of our Class A common stock and shares of our Class B common stock issued and outstanding, pro forma as adjusted.

(2) Subsequent to March 31, 2015, we repaid $160,0 million of our long-term debt from our cash and cash equivalents. As a result, the long-term debt that would have been classified as long-term debt, less current portion, that was repaid was classified as long-term debt, current portion, on our consolidated balance sheet as of March 31, 2015.
The number of shares of our Class A and Class B common stock to be outstanding after this offering is based upon no shares of our Class A common stock and 121,508,763 shares of our Class B common stock outstanding as of March 31, 2015 (prior to the automatic conversion of shares of our Class B common stock into an equivalent number of shares of our Class A common stock upon their sale by the selling stockholders in this offering) and does not include:

- 31,619,974 shares of our Class B common stock issuable upon the exercise of options to purchase shares of our Class B common stock outstanding as of March 31, 2015, with a weighted-average exercise price of $3.29 per share;
- 1,471,063 shares of our Class B common stock issuable upon the exercise of options to purchase shares of our Class B common stock granted after March 31, 2015, with a weighted-average exercise price of $18.85 per share;
- 194,423 shares of our Class B common stock issuable upon the vesting of RSUs outstanding as of March 31, 2015;
- 1,303,328 shares of our Class B common stock issuable upon the exercise of warrants to purchase convertible preferred stock outstanding as of March 31, 2015, with a weighted-average exercise price of $0.89 per share; and
- 8,397,398 shares of our common stock reserved for future issuance under our equity compensation plans, consisting of:
  - 5,897,398 shares of Class B common stock reserved for future issuance under our 2007 Plan as of March 31, 2015 (which reserve does not reflect the options to purchase shares of Class B common stock granted after March 31, 2015); and
  - 2,500,000 shares of Class A common stock reserved for future issuance under our 2015 ESPP, which will become effective on the date of this prospectus.

Any remaining shares available for issuance under our 2007 Plan will become reserved for future issuance as Class A common stock under our 2015 Plan, which will become effective on the date immediately prior to the date of this prospectus, and we will cease granting awards under the 2007 Plan. Our 2015 Plan and 2015 ESPP also provide for automatic annual increases in the number of shares reserved thereunder. See the section titled “Executive Compensation—Employee Benefit Plans” for additional information.
If you invest in our Class A common stock in this offering, your interest will be diluted immediately to the extent of the difference between the initial public offering price per share of our Class A common stock and the pro forma as adjusted net tangible book value per share of our Class A common stock immediately after this offering.

Our pro forma net tangible book value as of March 31, 2015 was $173.3 million, or $1.43 per share of common stock. Pro forma net tangible book value per share represents the amount of our total tangible assets less our total liabilities, divided by the number of shares of our common stock outstanding as of March 31, 2015, after giving effect to (i) the redesignation of our outstanding common stock as Class B common stock in 2015, (ii) the automatic conversion of all shares of our convertible preferred stock outstanding as of March 31, 2015 into 93,234,322 shares of our Class B common stock, (iii) the automatic conversion of the convertible preferred stock warrants to Class B common stock warrants, and the resulting remeasurement and assumed reclassification of the redeemable convertible preferred stock warrant liability to additional paid-in capital, and (iv) the filing and effectiveness of our restated certificate of incorporation.

After giving effect to the sale by us of shares of Class A 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, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of March 31, 2015 would have been $ million, or $ per share. This amount represents an immediate increase in pro forma net tangible book value of $ per share to our existing stockholders and an immediate dilution in pro forma net tangible book value of $ per share to investors purchasing shares of Class A common stock in this offering at the assumed initial public offering price.

The following table illustrates this dilution:

| Assumed initial public offering price per share | $ |
| Pro forma net tangible book value per share as of March 31, 2015 | $ |
| Increase in pro forma net tangible book value per share attributable to new investors purchasing in this offering | |
| Pro forma as adjusted net tangible book value per share after this offering | |
| Dilution in pro forma net tangible book value per share to investors in this offering | $ |

A $1.00 increase or decrease in the 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, would increase or decrease our pro forma as adjusted net tangible book value per share after this offering by $ and would increase or decrease dilution per share to investors 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 estimated underwriting discounts and commissions.

If the underwriters’ option to purchase additional shares to cover over-allotments is exercised in full, the pro forma as adjusted net tangible book value per share after this offering would be $ per share, and the dilution in pro forma net tangible book value per share to investors in this offering would be $ per share.
The following table presents, on a pro forma as adjusted basis as described above, as of March 31, 2015, the differences between our existing stockholders and the investors purchasing shares of our common stock in this offering, with respect to the number of shares purchased from us, the total consideration paid to us, and the average price per share paid by our existing stockholders or to be paid to us by investors purchasing shares in this offering at an assumed offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

<table>
<thead>
<tr>
<th>Shares Purchased</th>
<th>Total Consideration</th>
<th>Average Price Per Share</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percent</td>
</tr>
<tr>
<td>Existing stockholders</td>
<td>121,508,763</td>
<td>%</td>
</tr>
<tr>
<td>Investors in this offering</td>
<td>100.0%</td>
<td></td>
</tr>
</tbody>
</table>

A $1.00 increase or decrease in the assumed initial public offering price of $ per share would increase or decrease the total consideration paid by new investors by $ million and increase or decrease the percent of total consideration paid by new investors 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 estimated underwriting discounts and commissions.

Sales of shares of Class A common stock by the selling stockholders in this offering will reduce the number of shares of common stock held by existing stockholders to , or approximately % of the total shares of common stock outstanding after this offering, and will increase the number of shares held by new investors to , or approximately % of the total shares of common stock outstanding after this offering.

After giving effect to sales of shares in this offering by us and the selling stockholders, assuming the underwriters’ option to purchase additional shares to cover over-allotments is exercised in full, our existing stockholders would own % and our new investors would own % of the total number of shares of our common stock outstanding after this offering.

In addition, to the extent any outstanding stock options or warrants are exercised or RSUs settle, investors participating in this offering will experience further dilution.

The number of shares of our Class A and Class B common stock to be outstanding after this offering is based upon no shares of our Class A common stock and 121,508,763 shares of our Class B common stock outstanding as of March 31, 2015 (prior to the automatic conversion of shares of our Class B common stock into an equivalent number of shares of our Class A common stock upon their sale by the selling stockholders in this offering) and does not include:

- 31,619,974 shares of our Class B common stock issuable upon the exercise of options to purchase shares of our Class B common stock outstanding as of March 31, 2015, with a weighted-average exercise price of $3.29 per share;
- 1,471,063 shares of our Class B common stock issuable upon the exercise of options to purchase shares of our Class B common stock granted after March 31, 2015, with a weighted-average exercise price of $18.85 per share;
- 194,423 shares of our Class B common stock issuable upon the vesting of RSUs outstanding as of March 31, 2015;
- 1,303,328 shares of our Class B common stock issuable upon the exercise of warrants to purchase convertible preferred stock outstanding as of March 31, 2015, with a weighted-average exercise price of $0.89 per share; and
8,397,398 shares of our common stock reserved for future issuance under our equity compensation plans, consisting of:

- 5,897,398 shares of Class B common stock reserved for future issuance under our 2007 Plan as of March 31, 2015 (which reserve does not reflect the options to purchase shares of Class B common stock granted after March 31, 2015); and
- 2,500,000 shares of Class A common stock reserved for future issuance under our 2015 ESPP, which will become effective on the date of this prospectus.

Any remaining shares available for issuance under our 2007 Plan will become reserved for future issuance as Class A common stock under our 2015 Plan, which will become effective on the date immediately prior to the date of this prospectus, and we will cease granting awards under the 2007 Plan. Our 2015 Plan and 2015 ESPP also provide for automatic annual increases in the number of shares reserved thereunder. See the section titled “Executive Compensation—Employee Benefit Plans” for additional information.
We derived the selected consolidated statements of operations data for 2012, 2013, and 2014 and the selected consolidated balance sheet data as of December 31, 2013 and 2014 from our audited consolidated financial statements included elsewhere in this prospectus. The consolidated statements of operations data for 2010 and 2011, and the consolidated balance sheet data as of December 31, 2010, 2011, and 2012 are derived from audited consolidated financial statements that are not included in this prospectus. The selected consolidated statements of operations data for the three months ended March 31, 2014 and 2015 and the selected consolidated balance sheet data as of March 31, 2015 are derived from our unaudited consolidated financial statements included elsewhere in this prospectus. We have prepared the unaudited consolidated financial statements on the same basis as the audited consolidated financial statements and have included, in our opinion, all adjustments consisting only of normal recurring adjustments that we consider necessary for a fair statement of the financial information set forth in those statements. Our historical results are not necessarily indicative of the results that may be expected in the future. You should read this data together with our consolidated financial statements and related notes appearing elsewhere in this prospectus.

### Consolidated Statements of Operations Data:

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td>$5,180</td>
<td>$14,454</td>
<td>$76,373</td>
<td>$271,087</td>
<td>$745,433</td>
<td>$108,815</td>
<td>$336,754</td>
</tr>
<tr>
<td><strong>Cost of revenue</strong></td>
<td>$3,524</td>
<td>$9,222</td>
<td>$49,733</td>
<td>$210,836</td>
<td>$387,776</td>
<td>$64,046</td>
<td>$167,545</td>
</tr>
<tr>
<td><strong>Gross profit</strong></td>
<td>$1,656</td>
<td>$5,232</td>
<td>$26,640</td>
<td>$60,251</td>
<td>$357,657</td>
<td>$44,769</td>
<td>$169,209</td>
</tr>
<tr>
<td><strong>Operating expenses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>$1,909</td>
<td>$6,133</td>
<td>$16,210</td>
<td>$27,873</td>
<td>$54,167</td>
<td>$9,088</td>
<td>$22,426</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>$484</td>
<td>$1,868</td>
<td>$10,237</td>
<td>$26,847</td>
<td>$112,005</td>
<td>$11,273</td>
<td>$43,867</td>
</tr>
<tr>
<td>General and administrative</td>
<td>$629</td>
<td>$1,544</td>
<td>$3,968</td>
<td>$14,485</td>
<td>$33,556</td>
<td>$8,617</td>
<td>$12,981</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>$3,022</td>
<td>$9,545</td>
<td>$30,415</td>
<td>$69,205</td>
<td>$199,728</td>
<td>$28,978</td>
<td>$79,274</td>
</tr>
<tr>
<td><strong>Operating income (loss)</strong></td>
<td>$(1,366)</td>
<td>$(4,313)</td>
<td>$(3,775)</td>
<td>$(8,954)</td>
<td>$157,929</td>
<td>$15,791</td>
<td>$89,935</td>
</tr>
<tr>
<td><strong>Interest expense, net</strong></td>
<td>$(69)</td>
<td>$(15)</td>
<td>$(176)</td>
<td>$(1,082)</td>
<td>$(2,222)</td>
<td>$(409)</td>
<td>$(467)</td>
</tr>
<tr>
<td><strong>Other income (expense), net</strong></td>
<td>$4</td>
<td>$15</td>
<td>$26</td>
<td>$(3,649)</td>
<td>$(15,934)</td>
<td>$(1,219)</td>
<td>$(13,077)</td>
</tr>
<tr>
<td><strong>Income (loss) before income taxes</strong></td>
<td>$(1,366)</td>
<td>$(4,313)</td>
<td>$(3,925)</td>
<td>$(13,685)</td>
<td>$139,773</td>
<td>$14,163</td>
<td>$76,391</td>
</tr>
<tr>
<td><strong>Income tax expense</strong></td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Net income (loss)</strong></td>
<td>$(1,431)</td>
<td>$(4,317)</td>
<td>$(4,216)</td>
<td>$(51,622)</td>
<td>$(131,777)</td>
<td>$8,872</td>
<td>$47,997</td>
</tr>
</tbody>
</table>

**Net income (loss) per share attributable to common stockholders**:  
- **Basic**: $0.06, $0.18, $0.17, $1.98, $0.06, $0.39  
- **Diluted**: $0.06, $0.18, $0.17, $1.98, $0.94, $0.06, $0.33

**Pro forma net income per share attributable to common stockholders**:  
- **Basic**: $1.21  
- **Diluted**: $1.07, $0.48

### Other Data:

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Devices sold</strong></td>
<td>58</td>
<td>208</td>
<td>1,279</td>
<td>4,476</td>
<td>10,904</td>
<td>1,575</td>
<td>3,866</td>
</tr>
<tr>
<td><strong>Paid active users</strong></td>
<td>558</td>
<td>2,570</td>
<td>6,700</td>
<td>3,867</td>
<td>9,517</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Adjusted EBITDA</strong></td>
<td>$(1,255)</td>
<td>$(4,023)</td>
<td>$(2,401)</td>
<td>$(79,049)</td>
<td>$(191,042)</td>
<td>$(42,028)</td>
<td>$(93,383)</td>
</tr>
</tbody>
</table>
Table of Contents

Index to Financial Statements

(1) In March 2014, we recalled the Fitbit Force. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Fitbit Force Product Recall” for additional information. The recall, which primarily affected our results for the fourth quarter of 2013 and the first quarter of 2014, had the following effect on our income (loss) before income taxes:

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2013</td>
</tr>
<tr>
<td>Reduction of revenue</td>
<td>(30,607)</td>
</tr>
<tr>
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<tr>
<td>Impact on gross profit</td>
<td>(81,812)</td>
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<td>Incremental general and administrative expenses (benefit)</td>
<td>2,838</td>
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<tr>
<td>Impact on income (loss) before income taxes</td>
<td>(84,650)</td>
</tr>
</tbody>
</table>

(2) 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>Cost of revenue</td>
<td>—</td>
</tr>
<tr>
<td>Research and development</td>
<td>4</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>—</td>
</tr>
<tr>
<td>General and administrative</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>6</td>
</tr>
</tbody>
</table>

(3) See notes 2, 3, and 15 of the notes to our consolidated financial statements included elsewhere in this prospectus for an explanation of the calculations of our net income (loss) per share attributable to common stockholders, basic and diluted, and pro forma net income per share attributable to common stockholders, basic and diluted.

(4) See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Business Metrics—Devices Sold” for more information.

(5) See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Business Metrics—Paid Active Users” for more information.

(6) Adjusted EBITDA is a financial measure that is not calculated in accordance with U.S. GAAP. See the section titled “—Adjusted EBITDA” for information regarding our use of adjusted EBITDA and a reconciliation of adjusted EBITDA to net income (loss).

Consolidated Balance Sheet Data:

<table>
<thead>
<tr>
<th>As of December 31,</th>
<th>As of March 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2010</td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 7,948</td>
</tr>
<tr>
<td>Working capital</td>
<td>6,775</td>
</tr>
<tr>
<td>Total assets</td>
<td>9,197</td>
</tr>
<tr>
<td>Total long-term debt</td>
<td>444</td>
</tr>
<tr>
<td>Redeemable convertible preferred stock warrant liability</td>
<td>28</td>
</tr>
<tr>
<td>Redeemable convertible preferred stock</td>
<td>11,376</td>
</tr>
<tr>
<td>Retained earnings (accumulated deficit)</td>
<td>(4,380)</td>
</tr>
<tr>
<td>Total stockholders’ equity (deficit)</td>
<td>(4,370)</td>
</tr>
</tbody>
</table>

(1) Subsequent to March 31, 2015, we repaid $160.0 million of our long-term debt from our cash and cash equivalents. As a result, the long-term debt that would have been classified as long-term debt, less current portion, that was repaid was classified as long-term debt, current portion, on our consolidated balance sheet as of March 31, 2015.
Adjusted EBITDA

To supplement our consolidated financial statements presented in accordance with U.S. GAAP, we monitor and consider adjusted EBITDA, which is a non-GAAP financial measure. This non-GAAP financial measure is not based on any standardized methodology prescribed by U.S. GAAP and is not necessarily comparable to similarly-titled measures presented by other companies.

We define adjusted EBITDA as net income (loss) adjusted to exclude the impact of the Fitbit Force recall, stock-based compensation expense, the revaluation of our redeemable convertible preferred stock warrant liability, depreciation and amortization, interest expense (income), net, and income tax expense.

We use adjusted EBITDA to evaluate our operating performance and trends and make planning decisions. We believe that adjusted EBITDA helps identify underlying trends in our business that could otherwise be masked by the effect of the expenses and other items that we exclude in adjusted EBITDA. In particular, the exclusion of the effect of the Fitbit Force recall, which primarily impacted our results for the fourth quarter of 2013 and the first quarter of 2014, discussed in “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Fitbit Force Product Recall” and certain expenses in calculating adjusted EBITDA can provide a useful measure for period-to-period comparisons of our business. Additionally, we use this measure to evaluate our operating performance and trends and make planning decisions. Accordingly, we believe that adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results, enhancing the overall understanding of our past performance and future prospects, and allowing for greater transparency with respect to a key financial metric used by our management in its financial and operational decision-making.

Adjusted EBITDA is not prepared in accordance with U.S. GAAP, and should not be considered in isolation of, or as an alternative to, measures prepared in accordance with U.S. GAAP. There are a number of limitations related to the use of this non-GAAP financial measure rather than net income (loss), which is the nearest U.S. GAAP equivalent of adjusted EBITDA. Some of these limitations are:

- adjusted EBITDA excludes the Fitbit Force recall, which primarily impacted our results for the fourth quarter of 2013 and the first quarter of 2014, and which had a negative impact on our revenue and expenses during these periods;
- adjusted EBITDA excludes stock-based compensation expense, which has recently been, and will continue to be for the foreseeable future, a significant recurring expense for our business and an important part of our compensation strategy;
- adjusted EBITDA excludes the revaluation of our redeemable convertible preferred stock warrant liability, which is a historically recurring non-cash charge but will not recur in the periods following the completion of this offering;
- adjusted EBITDA excludes depreciation and amortization expense and, although these are non-cash expenses, the assets being depreciated and amortized may have to be replaced in the future;
- adjusted EBITDA does not reflect interest expense, or the cash requirements necessary to service interest or principal payments on our debt, which reduces cash available to us;
- adjusted EBITDA does not reflect income tax payments that reduce cash available to us; and
- the expenses and other items that we exclude in our calculation of adjusted EBITDA may differ from the expenses and other items, if any, that other companies may exclude from adjusted EBITDA when they report their operating results.

Because of these limitations, adjusted EBITDA should be considered along with other operating and financial performance measures presented in accordance with U.S. GAAP.
The following table presents a reconciliation of net income (loss) to adjusted EBITDA:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net income (loss)</td>
<td>$(1,431)</td>
<td>$(4,317)</td>
</tr>
<tr>
<td>Impact of Fitbit Force recall</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Stock-based compensation expense</td>
<td>6</td>
<td>60</td>
</tr>
<tr>
<td>Revaluation of redeemable convertible preferred stock warrant liability</td>
<td>—</td>
<td>13</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>101</td>
<td>202</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>69</td>
<td>15</td>
</tr>
<tr>
<td>Income tax expense</td>
<td>—</td>
<td>4</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$(1,255)</td>
<td>$(4,023)</td>
</tr>
</tbody>
</table>
Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the section titled “Selected Consolidated Financial and Other Data” and our consolidated financial statements and related notes included elsewhere in this prospectus. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from such forward-looking statements. Factors that could cause or contribute to those differences include, but are not limited to, those identified below and those discussed above in the section titled “Risk Factors” included elsewhere in this prospectus.

Overview

Fitbit is transforming the way millions of people around the world achieve their health and fitness goals. The Fitbit platform combines connected health and fitness devices with software and services, including an online dashboard and mobile apps, data analytics, motivational and social tools, personalized insights, and virtual coaching through customized fitness plans and interactive workouts. Our platform helps people become more active, exercise more, sleep better, eat smarter, and manage their weight. Fitbit appeals to a large, mainstream health and fitness market by addressing these key needs with advanced technology embedded in simple-to-use products and services. We pioneered the connected health and fitness market starting in 2007, and since then, we have grown into a leading global health and fitness brand. As of March 31, 2015, we have sold over 20.8 million devices since inception. According to The NPD Group, we held the leading position in the connected health and fitness device market, with a 68% share of the U.S. fitness activity tracker market, by dollars, in 2014. *

See “Industry and Market Data.”
We were founded by James Park and Eric N. Friedman in 2007 to help people lead healthier, more active lives by empowering them with data, inspiration, and guidance to reach their goals.

Our Key Milestones

<table>
<thead>
<tr>
<th>Month</th>
<th>Event Description</th>
<th>Devices Sold</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 2009</td>
<td>Began selling our first connected health and fitness device, the Fitbit tracker, which tracked steps, distance, calories burned, and sleep. We also introduced our online dashboard which could be synced to the Fitbit tracker.</td>
<td>5.5 Thousand Devices Sold</td>
<td>2009</td>
</tr>
<tr>
<td>December 2010</td>
<td>Introduced social features on our online dashboard, including friends and leaderboards.</td>
<td>0.1 Million Devices Sold</td>
<td>2010</td>
</tr>
<tr>
<td>July 2011</td>
<td>Began selling premium services through our online dashboard with a virtual trainer and additional analytics.</td>
<td>0.2 Million Devices Sold</td>
<td>2011</td>
</tr>
<tr>
<td>October 2012</td>
<td>Began selling in the United Kingdom, our first country outside the United States.</td>
<td>1.3 Million Devices Sold</td>
<td>2012</td>
</tr>
<tr>
<td>March 2013</td>
<td>Released a native Android mobile app.</td>
<td>4.5 Million Devices Sold</td>
<td>2013</td>
</tr>
<tr>
<td>May 2014</td>
<td>Began selling our first wrist-based device, the Fitbit Flex.</td>
<td>10.9 Million Devices Sold</td>
<td>2014</td>
</tr>
<tr>
<td>November 2014</td>
<td>Surpassed five million cumulative devices sold since inception.</td>
<td>13.2 Trillion Steps</td>
<td>2014</td>
</tr>
<tr>
<td>February 2015</td>
<td>Acquired FitStar to enhance our software and services offerings. FitStar provides interactive video-based exercise experiences on mobile devices and computers that utilize proprietary algorithms to adjust and customize workouts for individual users based on data gathered during their workouts. In addition, our community reached 13.2 trillion steps collectively taken since the launch of our first tracker—enough to walk around the earth more than 250,000 times.</td>
<td>13.2 Trillion Steps</td>
<td>2015</td>
</tr>
</tbody>
</table>
The core of our platform is our family of six wearable connected health and fitness trackers. These wrist-based and “clippable” devices automatically track users’ daily steps, calories burned, distance traveled, floors climbed, and active minutes and display real-time feedback to encourage them to become more active in their daily lives. Most of our trackers also measure sleep duration and quality, and our more advanced products track heart rate and GPS-based information such as speed, distance, and exercise routes. Several of our devices also feature deeper integration with smartphones, such as the ability to receive call and text notifications and control music. In addition, we offer a Wi-Fi connected scale that records weight, body fat, and BMI. We are able to enhance the functionality and features of our connected devices through wireless updates. Our platform also includes our online dashboard and mobile apps, which wirelessly and automatically sync with our devices. Our platform allows our users to see trends and achievements, access motivational tools such as virtual badges and real-time progress notifications, and connect, support, and compete with friends and family. We intend to continue to significantly invest in research and development in order to enhance our products and services.

We design our products primarily in California and outsource the production of our devices to contract manufacturers, which are responsible for procuring most of the components used in the manufacturing of our products from third-party suppliers. We also outsource packaging and fulfillment to third-party logistics providers around the world.

We generate substantially all of our revenue from sales of our connected health and fitness devices. We sell our products in over 45,000 retail stores and in more than 50 countries, through our retailers’ websites, through our online store at Fitbit.com, and as part of our corporate wellness offering. We seek to build global brand awareness, increase product adoption, and drive sales through our sales and marketing efforts. We intend to continue to significantly invest in these sales and marketing efforts in the future.

Our growth will depend in part on the adoption and sale of our products and services in international markets. In recent periods, we have experienced significant growth in international sales. In 2014 and for the three months ended March 31, 2015, 25% and 21%, respectively, of our revenue, based on ship-to destinations, was from sales outside of the United States. We believe international markets represent a significant growth opportunity for us. We intend to expand sales of our products and services in new and existing international markets by expanding our distribution channels through select retailers and strategic partnerships. We also intend to continue to invest across all geographic regions in sales and marketing efforts, including increasing our global advertising efforts, and in infrastructure and personnel to support our international expansion, including establishing additional sales offices globally. Our international expansion efforts have resulted and will continue to result in increased costs and are subject to a variety of risks, including increased competition, uncertain enforcement of our intellectual property rights, more complex distribution logistics, and the complexity of compliance with foreign laws and regulations.

We have grown significantly since our inception. In 2012, 2013, and 2014, we had revenue of $76.4 million, $271.1 million, and $745.4 million, respectively, net income (loss) of $(4.2) million, $(51.6) million, and $131.8 million, respectively, and adjusted EBITDA of $(2.4) million, $79.0 million, and $191.0 million, respectively. For the three months ended March 31, 2014 and 2015, we had revenue of $108.8 million and $336.8 million, respectively, net income of $8.9 million and $48.0 million, respectively, and adjusted EBITDA of $42.0 million and $93.4 million, respectively. See the section titled “Selected Consolidated Financial and Other Data—Adjusted EBITDA” for information regarding our use of adjusted EBITDA and a reconciliation of adjusted EBITDA to net income (loss). For 2012, 2013, and 2014, we sold 1.3 million, 4.5 million, and 10.9 million devices, respectively, and in the three months ended March 31, 2014 and 2015, we sold 1.6 million and 3.9 million devices, respectively. We also had 0.6 million, 2.6 million, 6.7 million, and 9.5 million paid active users as of December 31, 2012, 2013, and 2014, and March 31, 2015, respectively. See the section titled “—Key Business Metrics” for additional information regarding devices sold and paid active users.
Key Business Metrics

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

<table>
<thead>
<tr>
<th></th>
<th>As of or For the Year Ended December 31,</th>
<th></th>
<th>As of or For the Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2012</td>
<td>2013</td>
<td>2014 (in thousands)</td>
</tr>
<tr>
<td>Devices sold</td>
<td>1,279</td>
<td>4,476</td>
<td>10,904</td>
</tr>
<tr>
<td>Paid active users</td>
<td>558</td>
<td>2,570</td>
<td>6,700</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$(2,401)</td>
<td>$79,049</td>
<td>$191,042</td>
</tr>
</tbody>
</table>

**Devices Sold**

Devices sold represents the number of connected health and fitness devices that are sold during a period, net of expected returns and provisions for the Fitbit Force recall. Devices sold does not include sales of accessories. Growth rates between devices sold and revenue are not necessarily correlated because our revenue is affected by other variables, such as the types of products sold during the period, the introduction of new product offerings that have different U.S. MSRs, and sales of accessories and premium services.

**Paid Active Users**

We define a paid active user as a registered Fitbit user who, within the three months prior to the date of measurement, has (a) an active Fitbit Premium or FitStar subscription, (b) paired a health and fitness tracker or Aria scale with his or her Fitbit account, or (c) logged at least 100 steps with a health and fitness tracker or a weight measurement using an Aria scale. The number of paid active users is based on subscription and device activity associated with each Fitbit user account and, accordingly, a user with multiple devices synced to his or her Fitbit account is counted as only one paid active user regardless of the number of devices that such user syncs to the account.

**Adjusted EBITDA**

We define adjusted EBITDA as net income (loss) adjusted to exclude the impact of the Fitbit Force recall, stock-based compensation expense, the revaluation of our redeemable convertible preferred stock warrant liability, depreciation and amortization, interest expense (income), net, and income tax expense. See the section titled “Selected Consolidated Financial and Other Data—Adjusted EBITDA” for information regarding our use of adjusted EBITDA and a reconciliation of adjusted EBITDA to net income (loss).

**Factors Affecting Our Future Performance**

**Product Introductions**

Since the beginning of 2013, we have released five new connected health and fitness devices, including the Fitbit Charge, Fitbit Charge HR, and Fitbit Surge, which were released in the fourth quarter of 2014. To date, product introductions have had a significant, positive impact on our operating results due primarily to increases in revenue associated with sales of the new products in the quarters following their introduction. However, new product introductions could also adversely impact the sales of our existing products to retailers and users. In addition, we have incurred higher levels of sales and marketing expenses accompanying each product introduction. In the future, we intend to continue to release new products and enhance our existing products, and we expect that our operating results will be impacted by these releases.

**International Expansion**

Our products are sold in over 50 countries, and we have experienced significant growth in international sales in recent periods. In 2014 and for the three months ended March 31, 2015, 25% and 21%, respectively, of our
revenue, based on ship-to destinations, was from sales outside of the United States. We believe our global opportunity is significant, and to address this opportunity, we intend to continue to invest in sales and marketing efforts, distribution channels, and infrastructure and personnel to support our international expansion, including establishing additional sales offices globally. Our growth will depend in part on the adoption and sales of our products and services in international markets. Moreover, our international expansion efforts have resulted and will continue to result in increased costs and are subject to a variety of risks, including increased competition, uncertain enforcement of our intellectual property rights, more complex distribution logistics, and the complexity of compliance with foreign laws and regulations.

**Category Adoption and Market Growth**

Consumer spend on the wearable devices market is growing faster than on any segment in the global consumer electronics market. As a pioneer of this market and a leading connected health and fitness platform, we believe we have contributed significantly to the market’s growth. However, our future growth depends in part on the continued consumer adoption of wearable devices as a means to improve health and fitness and the growth of this market.

**Seasonality**

Historically, we have experienced higher revenue in the fourth quarter compared to other quarters due in large part to seasonal holiday demand. For example, in 2013 and 2014, our fourth quarter represented 40% and 50% of our annual revenue, respectively. We also incur higher sales and marketing expenses during these periods.

**Investing in Growth**

We intend to continue to make investments across our business to drive our growth. We intend to continue to invest significant resources in our sales, marketing, advertising, and brand management efforts to drive demand for our products and services globally. We also intend to continue to invest in research and development to enable us to introduce innovative new products and services and enhance existing products and services. We may also make acquisitions to further drive our growth. For example, we acquired FitStar in March 2015 to enhance our software and services offerings through interactive video-based exercise experiences on mobile devices and computers.

Furthermore, we intend to increase our focus on building relationships with employers and wellness providers. The corporate wellness market for connected health and fitness devices is new and is subject to a variety of challenges, including whether employers will continue to invest in such programs, long sales cycles, and substantial upfront sales costs. However, we believe that as healthcare costs continue to rise and as employers continue to seek ways to keep their employees active, engaged, and productive, more employers will implement or enhance their corporate wellness programs. In order to grow our corporate wellness presence, we intend to enhance our corporate wellness offering as well as expand our sales team focused on this market.

**Components of our Operating Results**

**Revenue**

We generate substantially all of our revenue from the sale of our connected health and fitness devices and accessories. We also generate a small portion of our revenue from our subscription-based premium services.

**Cost of Revenue**

Cost of revenue consists of product costs, including costs of contract manufacturers for production, shipping and handling costs, warranty replacement costs, packaging, costs related to the Fitbit Force recall, fulfillment costs, manufacturing and tooling equipment depreciation, warehousing costs, excess and obsolete inventory write-downs, and certain allocated costs related to management, facilities, and personnel-related expenses and other expenses associated with supply chain logistics. Personnel-related expenses include salaries, bonuses, benefits, and stock-based compensation.
Operating Expenses

Operating expenses consist of research and development, sales and marketing, and general and administrative expenses.

Research and Development. Research and development expenses consist primarily of personnel-related expenses, consulting and contractor expenses, tooling and prototype materials, and allocated overhead costs.

Substantially all of our research and development expenses are related to developing new products and services and improving our existing products and services. To date, research and development expenses have been expensed as incurred, because the period between achieving technological feasibility and the release of products and services for sale has been short and development costs qualifying for capitalization have been insignificant.

We expect our research and development expenses to increase in absolute dollars as we continue to make significant investments in developing new products and services and enhancing existing products and services.

Sales and Marketing. Sales and marketing expenses represent the largest component of our operating expenses and consist primarily of advertising and marketing promotions of our products and services and personnel-related expenses, as well as sales incentives, trade show and event costs, sponsorship costs, consulting and contractor expenses, travel, POP display expenses and related amortization, and allocated overhead costs. We expect our sales and marketing expenses to increase in absolute dollars as we continue to actively promote our products and services.

General and Administrative. General and administrative expenses consist of personnel-related expenses for our finance, legal, human resources, and administrative personnel, as well as the costs of professional services, any allocated overhead, information technology, and other administrative expenses. We expect our general and administrative expenses to increase in absolute dollars due to the anticipated growth of our business and related infrastructure as well as legal, accounting, insurance, investor relations, and other costs associated with becoming a public company.

Interest Expense, Net

Interest expense, net consists of interest expense associated with our debt financing arrangements, amortization of debt issuance costs, and interest income earned on our cash and cash equivalents.

Other Income (Expense), Net

Other income (expense), net consists of mark-to-market adjustments for the revaluation of our redeemable convertible preferred stock warrant liability and foreign currency gains and losses.

Income Tax Expense

We are subject to income taxes in the United States and foreign jurisdictions in which we do business. These foreign jurisdictions have statutory tax rates different from those in the United States. Accordingly, our effective tax rates will vary depending on the relative proportion of foreign to U.S. income, the utilization of foreign tax credits, and changes in tax laws.

Fitbit Force Product Recall

In March 2014, we recalled the Fitbit Force after some of our users experienced allergic reactions to adhesives in the wristband. This recall primarily impacted our results for the fourth quarter of 2013 and the first quarter of 2014. We established a reserve for the Fitbit Force recall after considering various factors including
cost estimates for customer returns, logistics and handling fees for managing product returns and processing refunds, obsolescence of on-hand inventory, cancellation charges for existing purchase commitments, rework of component inventory with the contract manufacturer, legal fees and settlement costs, and write-offs of tooling and manufacturing equipment.

The recall had the following effect on our income (loss) before income taxes:

### Operating Results

The following tables set forth the components of our consolidated statements of operations for each of the periods presented and as a percentage of our revenue for those periods. The period-to-period comparison of operating results is not necessarily indicative of results for future periods.

#### Consolidated Statements of Operations 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>2012 (1)</td>
<td>2013 (1)</td>
</tr>
<tr>
<td>Revenue</td>
<td>$ 76,373</td>
<td>$ 271,087</td>
</tr>
<tr>
<td>Cost of revenue (2)</td>
<td>49,733</td>
<td>210,836</td>
</tr>
<tr>
<td>Gross profit</td>
<td>26,640</td>
<td>60,251</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development (2)</td>
<td>16,210</td>
<td>27,873</td>
</tr>
<tr>
<td>Sales and marketing (2)</td>
<td>10,237</td>
<td>26,847</td>
</tr>
<tr>
<td>General and administrative (2)</td>
<td>3,968</td>
<td>14,485</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>30,415</td>
<td>69,205</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>(3,775)</td>
<td>(8,954)</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>(176)</td>
<td>(1,082)</td>
</tr>
<tr>
<td>Other income (expense), net</td>
<td>26</td>
<td>(3,649)</td>
</tr>
<tr>
<td>Income (loss) before income taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income tax expense</td>
<td>(3,925)</td>
<td>(13,685)</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$ (4,216)</td>
<td>$ (51,622)</td>
</tr>
</tbody>
</table>
In March 2014, we recalled the Fitbit Force. See the section titled “—Fitbit Force Product Recall” for additional information. The recall, which primarily affected our results for the fourth quarter of 2013 and the first quarter of 2014, had the following effect on our income (loss) before income taxes:

<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>2013</td>
<td>2014</td>
</tr>
<tr>
<td>Reduction of revenue</td>
<td>$(30,607)</td>
<td>$(8,112)</td>
</tr>
<tr>
<td>Incremental (benefit to) cost of revenue</td>
<td>51,205</td>
<td>11,339</td>
</tr>
<tr>
<td>Impact on gross profit</td>
<td>(81,812)</td>
<td>(19,451)</td>
</tr>
<tr>
<td>Incremental general and administrative expenses (benefit)</td>
<td>2,838</td>
<td>3,389</td>
</tr>
<tr>
<td>Impact on income (loss) before income taxes</td>
<td>$(84,650)</td>
<td>$(22,840)</td>
</tr>
</tbody>
</table>

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>2012</td>
<td>2013</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>$15</td>
<td>$37</td>
</tr>
<tr>
<td>Research and development</td>
<td>62</td>
<td>288</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>29</td>
<td>204</td>
</tr>
<tr>
<td>General and administrative</td>
<td>26</td>
<td>91</td>
</tr>
<tr>
<td>Total</td>
<td>$132</td>
<td>$620</td>
</tr>
</tbody>
</table>

Consolidated Statements of Operations 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>2012</td>
<td>2013</td>
</tr>
<tr>
<td>Revenue</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>65</td>
<td>78</td>
</tr>
<tr>
<td>Gross profit</td>
<td>35</td>
<td>22</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>21</td>
<td>10</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>14</td>
<td>10</td>
</tr>
<tr>
<td>General and administrative</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>40</td>
<td>25</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>(5)</td>
<td>(3)</td>
</tr>
<tr>
<td>Interest income (expense), net</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Other income (expense), net</td>
<td>—</td>
<td>(2)</td>
</tr>
<tr>
<td>Income (loss) before income taxes</td>
<td>(5)</td>
<td>(5)</td>
</tr>
<tr>
<td>Income tax expense</td>
<td>—</td>
<td>14</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>(5)%</td>
<td>(19)%</td>
</tr>
</tbody>
</table>
(1) In March 2014, we recalled the Fitbit Force. See the section titled “—Fitbit Force Product Recall” for additional information. The recall, which primarily affected our results for the fourth quarter of 2013 and the first quarter of 2014, had the following effect on our income (loss) before income taxes:

Comparison of the Three Months Ended March 31, 2014 and 2015

Revenue

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2013</td>
</tr>
<tr>
<td>Incremental (benefit to) cost of revenue</td>
<td>19%</td>
</tr>
<tr>
<td>Impact on gross profit</td>
<td>(30)</td>
</tr>
<tr>
<td>Incremental general and administrative expenses</td>
<td>1</td>
</tr>
<tr>
<td>Impact on income (loss) before taxes</td>
<td>(31)%</td>
</tr>
</tbody>
</table>

Revenue increased $227.9 million, or 209%, from $108.8 million for the three months ended March 31, 2014 to $336.8 million for the three months ended March 31, 2015. A substantial majority of the increase was due to an increase in the number of devices sold from 1.6 million in the three months ended March 31, 2014 to 3.9 million in the three months ended March 31, 2015, including $233.4 million from new products introduced in the fourth quarter of 2014. U.S. revenue, based on ship-to destinations, increased $175.5 million, or 195%, from $89.8 million for the three months ended March 31, 2014 to $265.3 million for the three months ended March 31, 2015 and international revenue, based on ship-to destinations, increased by $52.4 million, or 276%, from $19.0 million for the three months ended March 31, 2014 to $71.4 million for the three months ended March 31, 2015.

Cost of Revenue

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014</td>
</tr>
<tr>
<td>Revenue</td>
<td>$108,815</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>$64,046</td>
</tr>
<tr>
<td>Gross profit</td>
<td>44,769</td>
</tr>
<tr>
<td>Gross margin</td>
<td>41%</td>
</tr>
</tbody>
</table>

Cost of revenue increased $103.5 million, or 162%, from $64.0 million for the three months ended March 31, 2014 to $167.5 million for the three months ended March 31, 2015. The increase was primarily due to the increase in the number of devices sold, partially offset by a decrease of $12.6 million in costs, from $10.6 million in the three months ended March 31, 2014 to a benefit of $2.0 million in the three months ended March 31, 2015, incurred in connection with the recall of the Fitbit Force.
Gross margin increased to 50% for the three months ended March 31, 2015 from 41% for the three months ended March 31, 2014. The increase in gross margin was primarily due to a reduction in costs incurred in connection with the recall of the Fitbit Force and was also positively impacted by the mix of products sold.

**Research and Development**

<table>
<thead>
<tr>
<th>Three Months Ended March 31,</th>
<th>Change</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2014 (in thousands)</td>
<td>2015</td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>$9,088</td>
<td>$22,426</td>
</tr>
<tr>
<td></td>
<td>$13,338</td>
<td>147%</td>
</tr>
</tbody>
</table>

Research and development expenses increased $13.3 million, or 147%, from $9.1 million for the three months ended March 31, 2014 to $22.4 million for the three months ended March 31, 2015. The increase was primarily due to a $9.7 million increase in personnel-related expenses due to a 119% increase in headcount, and a $2.7 million increase in consultant and contractor expenses.

**Sales and Marketing**

<table>
<thead>
<tr>
<th>Three Months Ended March 31,</th>
<th>Change</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2014 (in thousands)</td>
<td>2015</td>
<td></td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>$11,273</td>
<td>$43,867</td>
</tr>
<tr>
<td></td>
<td>$32,594</td>
<td>289%</td>
</tr>
</tbody>
</table>

Sales and marketing expenses increased $32.6 million, or 289%, from $11.3 million for the three months ended March 31, 2014 to $43.9 million for the three months ended March 31, 2015. The increase was primarily due to a $24.8 million increase in expenses associated with advertising costs and other marketing programs. In addition, personnel-related expenses increased $3.8 million due to a 92% increase in headcount, and consulting and contractor expenses increased $3.3 million.

**General and Administrative**

<table>
<thead>
<tr>
<th>Three Months Ended March 31,</th>
<th>Change</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2014 (in thousands)</td>
<td>2015</td>
<td></td>
</tr>
<tr>
<td>General and administrative</td>
<td>$8,617</td>
<td>$12,981</td>
</tr>
<tr>
<td></td>
<td>$4,364</td>
<td>51%</td>
</tr>
</tbody>
</table>

(1) The Fitbit Force recall resulted in an increase to general and administrative expenses of $2.9 million for the three months ended March 31, 2014. See the section titled “—Fitbit Force Product Recall” for additional information.

General and administrative expenses increased $4.4 million, or 51%, from $8.6 million for the three months ended March 31, 2014 to $13.0 million for the three months ended March 31, 2015. The increase was primarily due to a $3.3 million increase in personnel-related expenses due to a 90% increase in headcount, a $1.7 million increase in consulting and contractor expenses, and a $0.6 million increase in allocated overhead, partially offset by a $1.9 million decrease in legal fees.

**Interest and Other Income (Expense), Net**

<table>
<thead>
<tr>
<th>Three Months Ended March 31,</th>
<th>Change</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2014 (in thousands)</td>
<td>2015</td>
<td></td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>$ (409)</td>
<td>$ (467)</td>
</tr>
<tr>
<td></td>
<td>$ (58)</td>
<td>14%</td>
</tr>
<tr>
<td>Other expense, net</td>
<td>(1,219)</td>
<td>(13,077)</td>
</tr>
<tr>
<td></td>
<td>(11,858)</td>
<td>973%</td>
</tr>
</tbody>
</table>
Other expense, net, increased $11.9 million, or 973%, from $1.2 million for the three months ended March 31, 2014 to $13.1 million for the three months ended March 31, 2015. The increase was primarily due to an increase of $9.0 million in charges related to the revaluation of our convertible preferred stock warrant liability and a $2.8 million increase in foreign exchange loss.

**Income Tax Expense**

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended March 31,</th>
<th>Change</th>
<th></th>
</tr>
</thead>
</table>
|                      | 2014 (in thousands) | 2015   | $  | %
| Income tax expense  | $5,291                      | $28,394| $23,103 | 437% |

Income tax expense increased $23.1 million, or 437%, from $5.3 million for the three months ended March 31, 2014 to $28.4 million for the three months ended March 31, 2015. The increase was primarily due to the increase in earnings in the three months ended March 31, 2015.

**Comparison of 2013 and 2014**

**Revenue**

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Change</th>
<th></th>
</tr>
</thead>
</table>
|                      | 2013 (1)                | 2014 (1)| $  | %
| Revenue              | $271,087                | $745,433| $474,346 | 175% |

Revenue increased $474.3 million, or 175%, from $271.1 million for 2013 to $745.4 million for 2014. A substantial majority of the increase was due to an increase in the number of devices sold from 4.5 million in 2013 to 10.9 million in 2014, including $151.9 million from new products that we began selling in 2014. U.S. revenue, based on ship-to destinations, increased $356.5 million, or 173%, from $206.1 million for 2013 to $562.6 million for 2014 and international revenue, based on ship-to destinations, increased by $117.9 million, or 181%, from $65.0 million for 2013 to $182.9 million for 2014.

**Cost of Revenue**

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Change</th>
<th></th>
</tr>
</thead>
</table>
|                      | 2013 (1)                | 2014 (1)| $  | %
| Cost of revenue      | $210,836                | $387,776| $176,940 | 84%
| Gross profit         | 60,251                  | 357,657| 297,406  | 494%
| Gross margin         | 22%                     | 48%    |     |     |

(1) The Fitbit Force recall resulted in a decrease to revenue of $30.6 million and $8.1 million in 2013 and 2014, respectively. See the section titled "—Fitbit Force Product Recall" for additional information.

Revenue increased $474.3 million, or 175%, from $271.1 million for 2013 to $745.4 million for 2014. A substantial majority of the increase was due to an increase in the number of devices sold from 4.5 million in 2013 to 10.9 million in 2014, including $151.9 million from new products that we began selling in 2014. U.S. revenue, based on ship-to destinations, increased $356.5 million, or 173%, from $206.1 million for 2013 to $562.6 million for 2014 and international revenue, based on ship-to destinations, increased by $117.9 million, or 181%, from $65.0 million for 2013 to $182.9 million for 2014.

Cost of revenue increased $176.9 million, or 84%, from $210.8 million for 2013 to $387.8 million for 2014. The increase was primarily due to the increase in the number of devices sold, partially offset by a decrease of $39.9 million in costs, from $51.2 million in 2013 to $11.3 million in 2014, incurred in connection with the recall of the Fitbit Force.

Gross margin increased to 48% for 2014 from 22% for 2013. The increase in gross margin was primarily due to a reduction in costs incurred in connection with the recall of the Fitbit Force.
Research and Development

Research and development expenses increased $26.3 million, or 94%, from $27.9 million for 2013 to $54.2 million for 2014. The increase was primarily due to a $13.9 million increase in personnel-related expenses due to a 110% increase in headcount, a $12.9 million increase in consultant and contractor expenses, and a $3.6 million increase in allocated overhead, which was partially offset by a decrease in expenses for tooling and prototype materials of $4.2 million.

Sales and Marketing

Sales and marketing expenses increased $85.2 million, or 317%, from $26.8 million for 2013 to $112.0 million for 2014. The increase was primarily due to a $66.9 million increase in expenses associated with advertising costs and other marketing programs. In addition, consulting and contractor expenses increased $9.6 million and personnel-related expenses increased $9.3 million due to a 131% increase in headcount, partially offset by a decrease of $0.6 million of other expenses.

General and Administrative

General and administrative expenses increased $19.1 million, or 132%, from $14.5 million for 2013 to $33.6 million for 2014. The increase was primarily due to a $6.8 million increase in legal fees, a $5.7 million increase in personnel-related expenses due to a 64% increase in headcount, a $2.2 million increase in allocated overhead, and a $2.7 million increase in consulting and contractor expenses.

Interest and Other Income (Expense), Net

Interest expense, net increased $1.1 million, or 105%, from $1.1 million for 2013 to $2.2 million for 2014. The increase was primarily due to an increase in average indebtedness outstanding compared to 2013. Other expense, net, increased $12.3 million, or 337%, from $3.6 million for 2013 to $15.9 million for 2014. The increase was primarily due to an increase of $9.9 million in charges related to the revaluation of our convertible preferred stock warrant liability and a $2.5 million increase in foreign exchange loss.
Income tax expense decreased $29.9 million, or 79%, from $37.9 million for 2013 to $8.0 million for 2014. Our effective tax rate was 277.2% and 5.7% for 2013 and 2014, respectively. The decrease in income tax expense and effective tax rate in 2014 was due to a $51.3 million tax benefit related to the release of a valuation allowance on deferred tax assets for accruals, which includes the impact of costs incurred in 2013 in connection with the Fitbit Force recall, and tax credits from prior years. This non-recurring tax benefit is offset by income tax expense on earnings in 2014 and a downward revaluation of our deferred tax assets due to a change in state tax law enacted in 2014.

Comparison of 2012 and 2013

Revenue increased $194.7 million, or 255%, from $76.4 million for 2012 to $271.1 million for 2013. A substantial majority of the change was due to an increase in the number of devices sold from 1.3 million in 2012 to 4.5 million in 2013, including $141.1 million from new products that we began selling in 2013. U.S. revenue, based on ship-to destinations, increased $138.8 million, or 206%, from $67.3 million for 2012 to $206.1 million for 2013 and international revenue, based on ship-to destinations, increased by $55.9 million, or 614%, from $9.1 million for 2012 to $65.0 million for 2013.

Cost of revenue increased $161.1 million, or 324%, from $49.7 million for 2012 to $210.8 million for 2013. The increase was primarily due to the increase in the number of devices sold and $51.2 million in costs incurred in connection with the recall of the Fitbit Force. Gross margin decreased to 22% for 2013 from 35% for 2012. The decrease in gross margin was primarily due to an increase in costs incurred in connection with the recall of the Fitbit Force partially offset by improved margins on our products.

(1) The Fitbit Force recall resulted in a decrease to revenue of $30.6 million in 2013. See the section titled “—Fitbit Force Product Recall” for additional information.

Cost of revenue

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>%</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>$49,733</td>
</tr>
<tr>
<td>Gross profit</td>
<td>26,640</td>
</tr>
<tr>
<td>Gross margin</td>
<td>35%</td>
</tr>
</tbody>
</table>
Research and development expenses increased $11.7 million, or 72%, from $16.2 million for 2012 to $27.9 million for 2013. The increase was primarily due to a $5.5 million increase in personnel-related expenses due to a 96% increase in headcount and a $5.2 million increase in expenses for tooling and prototype materials associated with new product introductions in 2013.

Sales and marketing expenses increased $16.6 million, or 162%, from $10.2 million for 2012 to $26.8 million for 2013. The increase was primarily due to an $8.0 million increase in marketing expenses associated with increased advertising and promotional activities. In addition, consulting and contractor expenses increased $3.3 million and personnel-related expenses increased $3.0 million due to a 55% increase in headcount.

General and administrative expenses increased $10.5 million, or 265%, from $4.0 million for 2012 to $14.5 million for 2013. The increase was primarily due to a $4.3 million increase in legal fees, a $2.5 million increase in personnel-related expenses due to a 133% increase in headcount, and a $2.1 million increase in allocated overhead.

Interest expense, net increased $0.9 million, or 515%, from $0.2 million for 2012 to $1.1 million for 2013. The increase was due to an increase in average indebtedness outstanding compared to 2012. Other income (expense), net increased $3.7 million from 2012 primarily due to an increase of $3.4 million in charges related to the revaluation of our convertible preferred stock warrant liability.
Income tax expense increased $37.6 million, from $0.3 million for 2012 to $37.9 million for 2013. The increase was primarily due to the continued recognition of a full valuation allowance on our deferred tax assets, which included the accrual for the Fitbit Force recall.

Quarterly Results of Operations and Key Metrics

Quarterly Results of Operations

The following table sets forth unaudited quarterly consolidated statements of operations data for each of the eight quarterly periods ended March 31, 2015.

The information for each of these quarters has been prepared on the same basis as the audited annual consolidated financial statements and related notes appearing elsewhere in this prospectus. These quarterly results are not necessarily indicative of our operating results for a full year or any future period.

Consolidated statement of operations data:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$47,169</td>
<td>$83,667</td>
<td>$107,130</td>
<td>$108,815</td>
<td>$113,572</td>
<td>$152,862</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>25,947</td>
<td>42,412</td>
<td>124,345</td>
<td>64,046</td>
<td>55,183</td>
<td>69,257</td>
</tr>
<tr>
<td>Gross profit</td>
<td>21,222</td>
<td>41,255</td>
<td>(17,215)</td>
<td>44,769</td>
<td>58,389</td>
<td>83,605</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>6,507</td>
<td>7,766</td>
<td>8,254</td>
<td>9,088</td>
<td>11,809</td>
<td>14,945</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>5,433</td>
<td>6,159</td>
<td>11,038</td>
<td>11,273</td>
<td>13,311</td>
<td>17,539</td>
</tr>
<tr>
<td>General and administrative</td>
<td>2,154</td>
<td>2,853</td>
<td>8,140</td>
<td>8,617</td>
<td>7,443</td>
<td>7,849</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>14,094</td>
<td>16,778</td>
<td>27,432</td>
<td>28,978</td>
<td>32,563</td>
<td>30,333</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>7,128</td>
<td>24,477</td>
<td>(44,647)</td>
<td>15,791</td>
<td>25,826</td>
<td>43,272</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>(268)</td>
<td>(274)</td>
<td>(344)</td>
<td>(409)</td>
<td>(452)</td>
<td>(680)</td>
</tr>
<tr>
<td>Other income (expense), net</td>
<td>(655)</td>
<td>(1,221)</td>
<td>(1,564)</td>
<td>(1,219)</td>
<td>(3,687)</td>
<td>(2,816)</td>
</tr>
<tr>
<td>Income (loss) before income taxes</td>
<td>6,205</td>
<td>22,982</td>
<td>(46,555)</td>
<td>14,163</td>
<td>21,687</td>
<td>39,776</td>
</tr>
<tr>
<td>Income tax expense (benefit)</td>
<td>3,325</td>
<td>12,297</td>
<td>20,341</td>
<td>5,291</td>
<td>6,934</td>
<td>(29,136)</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$2,880</td>
<td>$10,685</td>
<td>$(66,896)</td>
<td>$8,877</td>
<td>$14,755</td>
<td>$68,912</td>
</tr>
</tbody>
</table>

(1) In March 2014, we recalled the Fitbit Force. See the section titled “—Fitbit Force Product Recall” for additional information. The recall, which primarily affected our results for the fourth quarter of 2013 and the first quarter of 2014, had the following effect on our income (loss) before income taxes:

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(Reduction of) increase to revenue</td>
<td>$30,607</td>
<td>$(11,561)</td>
<td>$14,485</td>
<td>$3,449</td>
<td>$—</td>
<td>$—</td>
</tr>
<tr>
<td>Incremental (benefit to) cost of revenue</td>
<td>51,205</td>
<td>10,602</td>
<td>—</td>
<td>(1,485)</td>
<td>2,223</td>
<td>(2,040)</td>
</tr>
<tr>
<td>Impact on gross profit</td>
<td>(81,812)</td>
<td>(22,163)</td>
<td>1,485</td>
<td>1,226</td>
<td>2,040</td>
<td></td>
</tr>
<tr>
<td>Incremental general and administrative expenses (benefit)</td>
<td>2,876</td>
<td>2,838</td>
<td>1,483</td>
<td>2</td>
<td>(972)</td>
<td>(142)</td>
</tr>
<tr>
<td>Impact on income (loss) before income taxes</td>
<td>$84,450</td>
<td>$(25,039)</td>
<td>$(1,483)</td>
<td>$1,483</td>
<td>$2,199</td>
<td>$2,182</td>
</tr>
</tbody>
</table>
The following table sets forth the components of our consolidated statements of operations data, for each of the periods presented, as a percentage of revenue:

<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Consolidated statements of operations data:</strong></td>
<td></td>
<td></td>
<td></td>
<td></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>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>55%</td>
<td>51%</td>
<td>116%</td>
<td>59%</td>
<td>49%</td>
<td>45%</td>
<td>54%</td>
<td>50%</td>
</tr>
<tr>
<td>Gross profit</td>
<td>45%</td>
<td>49%</td>
<td>(16)%</td>
<td>41%</td>
<td>51%</td>
<td>55%</td>
<td>46%</td>
<td>50%</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>14%</td>
<td>9%</td>
<td>8%</td>
<td>9%</td>
<td>10%</td>
<td>10%</td>
<td>5%</td>
<td>7%</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>11%</td>
<td>7%</td>
<td>10%</td>
<td>10%</td>
<td>12%</td>
<td>12%</td>
<td>18%</td>
<td>13%</td>
</tr>
<tr>
<td>General and administrative</td>
<td>5%</td>
<td>4%</td>
<td>8%</td>
<td>8%</td>
<td>7%</td>
<td>5%</td>
<td>3%</td>
<td>4%</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>30%</td>
<td>20%</td>
<td>26%</td>
<td>27%</td>
<td>29%</td>
<td>27%</td>
<td>26%</td>
<td>24%</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>15%</td>
<td>29%</td>
<td>(42)%</td>
<td>14%</td>
<td>22%</td>
<td>28%</td>
<td>20%</td>
<td>26%</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>(1)%</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Other income (expense), net</td>
<td>(1)%</td>
<td>(1)%</td>
<td>(1)%</td>
<td>(1)%</td>
<td>(3)%</td>
<td>(2)%</td>
<td>(2)%</td>
<td>(4)%</td>
</tr>
<tr>
<td>Income (loss) before income taxes</td>
<td>13%</td>
<td>28%</td>
<td>(43)%</td>
<td>13%</td>
<td>19%</td>
<td>26%</td>
<td>18%</td>
<td>22%</td>
</tr>
<tr>
<td>Income tax expense (benefit)</td>
<td>7%</td>
<td>15%</td>
<td>19%</td>
<td>5%</td>
<td>6%</td>
<td>(19)%</td>
<td>7%</td>
<td>8%</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>6%</td>
<td>13%</td>
<td>(62)%</td>
<td>8%</td>
<td>13%</td>
<td>45%</td>
<td>11%</td>
<td>14%</td>
</tr>
</tbody>
</table>

(1) In March 2014, we recalled the Fitbit Force. See the section titled “—Fitbit Force Product Recall” for additional information. The recall, which primarily affected our results for the fourth quarter of 2013 and the first quarter of 2014, had the following effect on our income (loss) before income taxes:

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Three Months Ended</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Incremental (benefit to) cost of revenue</td>
<td>48%</td>
<td>9%</td>
<td>—</td>
<td>—</td>
<td>(1)%</td>
<td>1%</td>
</tr>
<tr>
<td>Impact on gross profit</td>
<td>76%</td>
<td>(20)%</td>
<td>—</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Incremental general and administrative expenses (benefit)</td>
<td>3%</td>
<td>3%</td>
<td>1%</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Impact on income (loss) before income taxes</td>
<td>19%</td>
<td>(23)%</td>
<td>(1)%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
</tbody>
</table>

**Quarterly Trends**

Our quarterly revenue increased sequentially for all periods presented due primarily to increases in the number of devices sold, which was partly the result of the introduction of five new devices since the beginning of 2013, and growth in international sales. Generally, we have experienced the highest levels of revenue in the fourth quarter of the year compared to other quarters due in large part to seasonal holiday demand.

Quarterly costs and expenses generally increased sequentially for all periods presented, primarily due to the increase of personnel-related expenses from increases in headcount and marketing and advertising expenses from our efforts to increase sales of our products and services. The increase in expenses for the three months ended December 31, 2014 was primarily due to an increase in expenses associated with advertising costs and other marketing programs for the 2014 holiday season. The Fitbit Force recall significantly affected our results for the fourth quarter of 2013 and the first quarter of 2014. See the section titled “—Fitbit Force Product Recall” for additional information.
Overall operating results fluctuate from quarter to quarter as a result of a variety of factors, including seasonal factors and economic cycles that influence consumer retail product purchase trends.

**Key Metrics**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>745</td>
<td>1,291</td>
<td>1,919</td>
<td>1,575</td>
<td>1,720</td>
<td>2,332</td>
<td>5,277</td>
<td>3,866</td>
</tr>
</tbody>
</table>

Adjusted EBITDA

<table>
<thead>
<tr>
<th>Three Months Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
</tr>
<tr>
<td>Net income (loss)</td>
</tr>
<tr>
<td>Impact of Fitbit Force recall</td>
</tr>
<tr>
<td>Stock-based compensation expense</td>
</tr>
<tr>
<td>Revaluation of redeemable convertible preferred stock warrant liability</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
</tr>
<tr>
<td>Interest expense, net</td>
</tr>
<tr>
<td>Income tax expense (benefit)</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
</tr>
</tbody>
</table>

**Liquidity and Capital Resources**

Our operations have been financed primarily through cash flow from operating activities, the net proceeds from the sale of our preferred equity securities, and borrowings under our credit facilities. As of March 31, 2015, we had cash and cash equivalents of $237.8 million and total long-term debt of $159.6 million, excluding $0.4 million of debt discount. Subsequent to March 31, 2015, we repaid $160.0 million of our long-term debt, which reduced our cash and cash equivalents by an equivalent amount. As a result, the long-term debt that would have been classified as long-term debt, less current portion, that was repaid was classified as long-term debt, current portion, on our consolidated balance sheet as of March 31, 2015.

We believe our existing cash and cash equivalent balances and cash flow from operations will be sufficient to meet our working capital and capital expenditure needs for at least the next 12 months. Our future capital requirements may vary materially from those currently planned and will depend on many factors, including our rate of revenue growth, the timing and extent of spending on research and development efforts and other business initiatives, the expansion of sales and marketing activities, the timing of new product introductions, market acceptance of our products and overall economic conditions. To the extent that current and anticipated future sources of liquidity are insufficient to fund our future business activities and requirements, we may be required to seek additional equity or debt financing. The sale of additional equity would result in additional dilution to our stockholders. The incurrence of debt financing would result in debt service obligations and the instruments governing such debt could provide for operating and financing covenants that would restrict our operations.
Credit Facilities

In August 2014, we entered into an amended and restated credit agreement, or Asset-Based Credit Facility, which allows us to borrow up to $180.0 million and a revolving credit and guarantee agreement, or Cash Flow Facility, which allows us to borrow up to $50.0 million.

Asset-Based Credit Facility

We entered into the Asset-Based Credit Facility with several financial institutions, including affiliates of Morgan Stanley & Co. LLC, SunTrust Robinson Humphrey, Inc., and Deutsche Bank Securities Inc. The Asset-Based Credit Facility allows us to borrow up to the lesser of (i) $180.0 million, including up to $50.0 million for the issuance of letters of credit and up to $25.0 million for swing line loans and (ii) the borrowing base then in effect less the amount then outstanding under letters of credit and loans. The borrowing base is determined by our collateral agents based on several variables, including percentages of the book value of certain eligible accounts receivable and a percentage of certain eligible inventories. Borrowings under the Asset-Based Credit Facility may be drawn as Alternate Base Rate, or ABR, loans or Eurodollar loans, and matures in August 2018. ABR loans bear interest at a variable rate equal to the applicable margin plus the highest of (i) the prime rate, (ii) the federal funds effective rate plus 0.5%, and (iii) the Eurodollar rate plus 1.0%, but in any case at a minimum rate of 3.25% per annum. Eurodollar loans bear interest at a variable rate based on the LIBOR rate and Euro currency reserve requirements. We are also required to pay an annual commitment fee on the average daily unused portion of the facility of 0.25%, 0.35%, or 0.45%, based on usage of the facility.

We have the option to repay our borrowings under the Asset-Based Credit Facility without penalty prior to maturity. The Asset-Based Credit Facility requires us to comply with certain financial covenants, including maintaining a consolidated fixed charge coverage ratio of at least 1.1:1, consolidated leverage ratios of between 3:1 and 2:1, and levels of liquidity of not less than $15.0 million. The Asset-Based Credit Facility also requires us to comply with certain non-financial covenants. We were in compliance with these covenants as of December 31, 2014 and March 31, 2015.

As of March 31, 2015, we had $160.0 million of outstanding borrowings under the Asset-Based Credit Facility. Subsequent to March 31, 2015, we repaid $160.0 million of our indebtedness under our Asset-Based Credit Facility.

Cash Flow Facility

We entered into the Cash Flow Facility with several financial institutions, including affiliates of Morgan Stanley & Co. LLC and SunTrust Robinson Humphrey, Inc. In October 2014, we entered into an incremental commitment joinder agreement with an affiliate of Barclays Capital Inc., increasing the borrowing limit under the Cash Flow Facility. The Cash Flow Facility allows us to borrow up to $50.0 million, including up to $10.0 million for the issuance of letters of credit and up to $10.0 million for swing line loans, and matures in August 2018. Borrowings under our Cash Flow Facility may also be drawn as ABR loans or Eurodollar loans. ABR loans under our Cash Flow Facility bear interest at a variable rate equal to the applicable margin plus the highest of (i) 3.5%, (ii) the prime rate, (iii) the federal funds effective rate plus 0.5%, and (iv) the adjusted LIBOR rate plus 1.0%. Eurodollar loans under our Cash Flow Facility bear interest at a variable rate for any day based on the LIBOR rate and Euro currency reserve requirements. We are also required to pay an annual commitment fee on the average daily unused portion of the facility of 0.375% or 0.5%, based on usage of the facility. The Cash Flow Facility also requires us to comply with certain financial covenants, including maintaining certain consolidated leverage ratios of between 3:1 and 2:1, and other non-financial covenants. We were in compliance with these covenants as of December 31, 2014 and March 31, 2015. As of March 31, 2015 we had no outstanding borrowings under the Cash Flow Facility.

Our obligations under both of our credit facilities are secured by substantially all of our assets, including our intellectual property.
The following table summarizes our cash flows for the periods indicated:

### Cash Flows

#### Year Ended December 31,

<table>
<thead>
<tr>
<th>Year Ended December 31</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net cash provided by (used in):</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating activities</td>
<td>($6,884)</td>
<td>$33,171</td>
<td>$18,774</td>
<td>$9,483</td>
</tr>
<tr>
<td>Investing activities</td>
<td>(2,505)</td>
<td>(9,834)</td>
<td>(24,185)</td>
<td>(599)</td>
</tr>
<tr>
<td>Financing activities</td>
<td>7,749</td>
<td>45,243</td>
<td>119,264</td>
<td>27,052</td>
</tr>
<tr>
<td>Net change in cash and cash equivalents</td>
<td>($1,640)</td>
<td>$68,580</td>
<td>$113,853</td>
<td>$16,970</td>
</tr>
</tbody>
</table>

#### Three Months Ended March 31,

<table>
<thead>
<tr>
<th>Year Ended December 31</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net cash provided by (used in):</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating activities</td>
<td>($6,884)</td>
<td>$33,171</td>
<td>$18,774</td>
<td>$9,483</td>
</tr>
<tr>
<td>Investing activities</td>
<td>(2,505)</td>
<td>(9,834)</td>
<td>(24,185)</td>
<td>(599)</td>
</tr>
<tr>
<td>Financing activities</td>
<td>7,749</td>
<td>45,243</td>
<td>119,264</td>
<td>27,052</td>
</tr>
<tr>
<td>Net change in cash and cash equivalents</td>
<td>($1,640)</td>
<td>$68,580</td>
<td>$113,853</td>
<td>$16,970</td>
</tr>
</tbody>
</table>

### Cash Flows from Operating Activities

Net cash provided by operating activities of $32.7 million for the three months ended March 31, 2015 was primarily due to net income of $48.0 million and non-cash adjustments of $16.8 million, partially offset by a decrease in net change in operating assets and liabilities of $32.2 million. Non-cash adjustments primarily consisted of the revaluation of the redeemable convertible preferred stock warrant liability and stock-based compensation expense. The decrease in net change in operating assets and liabilities was primarily due to a $64.3 million decrease in accounts payable and accrued liabilities and other liabilities related to growth of expenditures to support general business growth, a $24.2 million increase in inventories, and a $12.9 million decrease in income tax payable, partially offset by a $77.4 million decrease in accounts receivable. Our days sales outstanding in accounts receivable decreased from 58 days as of December 31, 2014 to 43 days as of March 31, 2015, primarily due to timing of revenue within the quarter. Inventory levels have increased to support demand for the new products announced in the fourth quarter of 2014.

Net cash used in operating activities of $9.5 million for the three months ended March 31, 2014 was primarily due to a decrease in net change in operating assets and liabilities of $21.6 million, partially offset by net income of $8.9 million and non-cash adjustments of $3.3 million. The decrease in net change in operating assets and liabilities was primarily due to a $46.0 million decrease in accounts payable and accrued liabilities and other liabilities, partially offset by a $31.0 million decrease in accounts receivable.

Net cash provided by operating activities of $18.8 million for 2014 was primarily due to net income of $131.8 million, partially offset by a decrease in net change in operating assets and liabilities of $102.8 million, and non-cash adjustments of $10.2 million. The decrease in net change in operating assets and liabilities was primarily due to a $158.8 million increase in accounts receivable due to increased sales in the fourth quarter of 2014 as a result of increased product demand, a $61.6 million increase in inventories as a result of a decrease in inventory turnover during 2014 primarily due to increased inventory levels for new products announced in the fourth quarter of 2014, and a $60.5 million decrease in Fitbit Force recall liabilities, partially offset by a $171.5 million increase in accounts payable and accrued liabilities and other liabilities related to growth of expenditures to support general business growth. Non-cash adjustments primarily consisted of deferred taxes, partially offset by the revaluation of the redeemable convertible preferred stock warrant liability. Our days sales outstanding in accounts receivable decreased from 69 days as of December 31, 2013 to 58 days as of December 31, 2014 due to stronger collections in the fourth quarter of 2014 compared to the fourth quarter of 2013.

Net cash provided by operating activities of $33.2 million for 2013 was primarily due to an increase in net change in operating assets and liabilities of $64.0 million and non-cash adjustments of $20.8 million, partially offset by a net loss of $51.6 million. The increase in net change in operating assets and liabilities was primarily due to a $77.9 million increase in accounts payable and accrued liabilities and other liabilities related to growth.
of expenditures to support general business growth, and a $72.7 million increase in Fitbit Force recall liabilities, partially offset by a $55.6 million increase in accounts receivable due to increased sales in the fourth quarter of 2013 as a result of increased product demand, and a $47.4 million increase in inventories driven by higher levels of inventory to support demand. Non-cash adjustments primarily consisted of provisions for inventory obsolescence related to the Fitbit Force recall and the revaluation of the redeemable convertible preferred stock warrant liability. Our days sales outstanding in accounts receivable decreased from 73 days as of December 31, 2012 to 69 days as of December 31, 2013 due to stronger collections in the fourth quarter of 2013 compared to the fourth quarter of 2012.

Net cash used in operating activities of $6.9 million for 2012 was primarily due to a decrease in net change in operating assets and liabilities of $4.5 million and a net loss of $4.2 million, partially offset by non-cash adjustments of $1.8 million. The increase in net change in operating assets and liabilities was primarily due to a $22.2 million increase in accounts payable and accrued liabilities and other liabilities related to growth of expenditures to support general business growth, partially offset by a $20.1 million increase in accounts receivable due to increased sales in the fourth quarter of 2012 as a result of increased product demand, and a $9.4 million increase in inventories due to increased inventory levels for products released in the fourth quarter of 2012. Non-cash adjustments primarily consisted of depreciation and amortization.

Cash Flows from Investing Activities
Cash used in investing activities for the three months ended March 31, 2015 of $16.0 million was due to the cash portion of the acquisition of FitStar of $11.0 million, net of cash acquired, and purchases of property and equipment.

Cash used in investing activities for the three months ended March 31, 2014 of $0.6 million was due to $2.9 million used for purchases of property and equipment, partially offset by a $2.3 million increase in restricted cash related to our operating lease obligations.

Cash used in investing activities for 2014 of $24.2 million was due to $26.5 million used for purchases of property and equipment, partially offset by a decrease of $2.3 million in restricted cash related to operating lease obligations.

Cash used in investing activities for 2013 of $9.8 million was due to $7.5 million used for purchases of property and equipment, and a $2.3 million increase in restricted cash related to our operating lease obligations.

Cash used in investing activities for 2012 of $2.5 million related to purchases of property and equipment.

In March 2015, we acquired FitStar for total consideration of $32.8 million, comprised of $13.6 million of common stock, $11.5 million of cash, and $7.7 million of contingent consideration. We determined the fair market value of the contingent consideration, according to which we may be obligated to issue additional common stock or pay cash, to be $7.7 million as of the acquisition date. The actual amount of additional common stock or cash to be paid, if any, will depend on market-based events that may occur in the future. We may continue to use cash in the future to acquire businesses and technologies that enhance and expand our product offerings. Due to the nature of these transactions, it is difficult to predict the amount and timing of such cash requirements to complete such transactions. We may be required to raise additional funds to complete future acquisitions.

Cash Flows from Financing Activities
Cash provided by financing activities for the three months ended March 31, 2015 of $25.6 million was primarily related to net borrowings of $25.5 million under our credit facilities.

Cash provided by financing activities for the three months ended March 31, 2014 of $27.1 million was primarily related to net borrowings of $27.0 million under our credit facilities.
Cash provided by financing activities for 2014 of $119.3 million was primarily related to net borrowings of $119.1 million under our credit facilities.

Cash provided by financing activities for 2013 of $45.2 million primarily consisted of net proceeds of $42.8 million related to the issuance of our Series D convertible preferred stock and net borrowings of $2.2 million under our credit facilities as well as proceeds from the issuance of common stock upon exercise of stock options of $0.2 million.

Cash provided by financing activities for 2012 primarily consisted of $7.7 million of net borrowings under our credit facilities, net of issuance costs.

**Contractual Obligations and Other Commitments**

The following table summarizes our non-cancelable contractual obligations as of December 31, 2014:

<table>
<thead>
<tr>
<th>PaymentsDueByPeriod</th>
<th>Total</th>
<th>Less than 1 Year</th>
<th>1-3 Years (in thousands)</th>
<th>3-5 Years</th>
<th>More than 5 Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt principal and interest (1)</td>
<td>$132,589</td>
<td>$132,589</td>
<td>$ —</td>
<td>$ —</td>
<td>$ —</td>
</tr>
<tr>
<td>Operating leases (2)</td>
<td>20,188</td>
<td>4,224</td>
<td>11,365</td>
<td>4,599</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>$152,777</td>
<td>$136,813</td>
<td>$11,365</td>
<td>$4,599</td>
<td>$ —</td>
</tr>
</tbody>
</table>

(1) Interest payments were calculated using the applicable rate as of December 31, 2014. See note 7 of the notes to our consolidated financial statements included elsewhere in this prospectus. Subsequent to December 31, 2014, we repaid $133.0 million of our long-term debt. As a result, the long-term debt that would have been classified as long-term debt, less current portion, that was repaid was classified as long-term debt, current portion, on our consolidated balance sheet as of December 31, 2014.

(2) We lease our facilities under long-term operating leases, which expire at various dates through April 2020. The lease agreements frequently include provisions which require us to pay taxes, insurance, or maintenance costs.

Purchase orders or contracts for the purchase of certain goods and services are not included in the preceding table. The aggregate amount of purchase orders open as of December 31, 2014 was approximately $257.0 million. We cannot determine the aggregate amount of such purchase orders that represent contractual obligations because purchase orders may represent authorizations to purchase rather than binding agreements. Our purchase orders are based on our current needs and are fulfilled by our suppliers, contract manufacturers, and logistics providers within short periods of time. We subcontract with other companies to manufacture our products. During the normal course of business, we and our contract manufacturers procure components based upon a forecasted production plan. If we cancel all or part of the orders, we may be liable to our suppliers and contract manufacturers for the cost of the unutilized component orders or components purchased by our contract manufacturers.

The table above excludes the liability for uncertain tax positions of $10.0 million as of December 31, 2014, due to the uncertainty of when the related tax settlements will become due.

During the three months ended March 31, 2015, we entered into additional contractual obligations. Our total future non-cancelable minimum payments under non-cancelable contractual obligations were $185.5 million as of March 31, 2015, which consisted of $159.6 million of debt principal and interest and $25.9 million of operating leases. Subsequent to March 31, 2015, we repaid $160.0 million of our long-term debt. The total future non-cancelable minimum payments under non-cancelable contractual obligations exclude the liability for uncertain tax positions of $11.1 million as of March 31, 2015. The aggregate amount of purchase orders open as of March 31, 2015 was approximately $314.1 million.

**Off-Balance Sheet Arrangements**

We have not entered into any off-balance sheet arrangements and do not have any holdings in variable interest entities.
Critical Accounting Policies and Estimates

Our management’s discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenue generated and expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We believe that the accounting policies discussed below are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management’s estimates, assumptions, and judgments.

Revenue Recognition

We generate substantially all of our revenue from the sale of our connected health and fitness devices and accessories. We also generate a small portion of our revenue from our subscription-based premium services. We recognize revenue when persuasive evidence of an arrangement exists, delivery has occurred, the sales price is fixed or determinable, and collection is reasonably assured. We consider delivery of our products to have occurred once title and risk of loss has been transferred. We recognize revenue, net of estimated sales returns, sales incentives, discounts, and sales tax. We generally recognize revenue for products sold through retailers and distributors on a sell-in basis. We have determined our multiple element arrangements generally include three separate units of accounting. The first deliverable is the hardware and firmware essential to the functionality of our connected health and fitness devices delivered at the time of sale. The second deliverable is the software services included with the products, which are provided free of charge and enables users to sync, view, and access real-time data on our online dashboard and mobile apps. The third deliverable is the embedded right included with the purchase of the device to receive, on a when-and-if-available basis, future unspecified firmware upgrades and features relating to the product’s essential firmware. Commencing in the first quarter of 2015, we began accounting for the embedded right as a separate unit of accounting, which is when we believe, through recent public announcements, we had created an implied obligation to, from time to time, provide future unspecified firmware upgrades and features to the firmware to improve and add new functionality to our health and fitness devices.

We allocate revenue to all deliverables based on their relative selling prices. We use a hierarchy to determine the selling price to be used for allocating revenue to deliverables: (i) vendor-specific objective evidence, or VSOE, of fair value, (ii) third-party evidence, or TPE, and (iii) best estimate of the selling price, or BESP, of selling price. We currently cannot establish VSOE for any of our deliverables since none of the deliverables are sold separately. Our process for determining BESP considers multiple factors including consumer behaviors and our internal pricing model and may vary depending upon the facts and circumstances related to each deliverable. BESP for our connected health and fitness devices and unspecified upgrade rights reflect our best estimate of the selling prices if they were sold regularly on a stand-alone basis and comprises the majority of the arrangement consideration. BESP for upgrade rights currently ranges from $1 to $5. TPE for our online dashboard and mobile apps is currently estimated at $0.99.

Amounts allocated to the delivered health and fitness devices are recognized at the time of delivery, provided the other conditions for revenue recognition have been met. Amounts allocated to our online dashboard and mobile apps and unspecified upgrade rights are deferred and recognized on a straight-line basis over the estimated usage period.

We offer our users the ability to purchase subscription-based premium services, through which our users receive incremental features, including access to a digital personal trainer and in-depth analytics regarding the user’s personal metrics. Amounts paid for premium subscriptions are deferred and recognized ratably over the

75
service period which is typically 12 months. Revenue from subscription-based premium services was less than 1% of revenue for all periods presented.

In addition, we offer access to a customized corporate dashboard tool to certain customers in our corporate wellness offering. This tool is currently being offered at no cost for the first year. We are currently unable to establish VSOE or TPE for the corporate dashboard tool. Current BESP of $20,000 for the corporate dashboard is determined based on our internal pricing model for anticipated renewals for existing customers and pricing for new customers. Revenue allocated to the corporate dashboard is deferred and recognized on a straight-line basis over the estimated access period of 12 months. Revenue from the corporate dashboard tool was less than 1% of revenue for all periods presented.

We account for shipping and handling fees billed to customers as revenue. Sales taxes and value added taxes collected from customers are remitted to governmental authorities, are not included in revenue, and are reflected as a liability on our consolidated balance sheets.

Rights of Return, Stock Rotation Rights, and Price Protection
We offer limited rights of return, stock rotation rights, and price protection under various policies and programs with our retailer and distributor customers and end-users. Below is a summary of the general provisions of such policies and programs:

- Certain retailers and distributors are allowed to return products that were originally sold through to an end-user, called “open box” returns, and such returns may be made at any time after original sale.
- All purchases through Fitbit.com are covered by a 45-day right of return.
- Distributors are allowed stock rotation rights which are limited rights of return of products purchased during a prior period, generally one quarter.
- Distributors and retailers are allowed return rights for defective products.
- Certain distributors are offered price protection that allows for the right to a partial credit for unsold inventory held by the distributor if we reduce the selling price of a product.

We meet all conditions required to recognize revenue at the time of sale when a right of return exists. For example, our price to the buyer is fixed or determinable at time of sale; the buyer’s obligation to pay is not contingent on resale of the product; and we are able to reasonably estimate the amount of future returns. We estimate and record reserves for these policies and programs as a reduction of revenue and accounts receivable. On a quarterly basis, the amount of revenue that is reserved for future returns is calculated based on historical trends and data specific to each reporting period. We review the actual returns evidenced in prior quarters as a percent of related revenue to determine the historical returns rate. We then apply the historical rate of returns to the current period revenue as a basis for estimating future returns. Through March 31, 2015, actual returns have primarily been open-box returns. In addition, through March 31, 2015, we have had minimal stock rotation or price protection claims. When necessary, we also provide a specific reserve for products in the distribution channel in excess of estimated requirements. This estimate can be affected by the amount of a particular product in the channel, the rate of sell-through, product plans, and other factors. We also consider whether there are circumstances which may result in anticipated returns higher than the historical return rate from direct customers and record an additional reserve as necessary.

Sales Incentives
We offer sales incentives such as cooperative advertising and marketing development fund programs, rebates, and other incentives. We record cooperative advertising and marketing development fund programs with customers as a reduction to revenue unless we receive an identifiable benefit in exchange for credits claimed by the customer and can reasonably estimate the fair value of the identifiable benefit received, in which case we will record it as a marketing expense. We recognize a liability with a reduction to revenue for rebates or other incentives based on the estimated amount of rebates or credits that will be claimed by customers.
Inventories consist of finished goods and component parts, which are purchased from contract manufacturers and component suppliers. Inventories are stated at the lower of cost or market on a first-in, first-out basis. We assess the valuation of inventory and periodically write down the value for estimated excess and obsolete inventory based upon estimates of future demand and market conditions.

Product Warranty

We offer a standard product warranty that our products will operate under normal use for a period of one-year from the date of original purchase, except in the European Union where we provide a two-year warranty. We have the obligation, at our option, to either repair or replace the defective product. At the time revenue is recognized, an estimate of future warranty costs is recorded as a component of cost of revenues. Factors that affect the warranty obligation include product failure rates and service delivery costs incurred in correcting the product failures. The warranty obligation does not consider historical experience of the Fitbit Force product as a separate reserve has been established for the Fitbit Force recall. Our products are manufactured by contractor manufacturers, and in certain cases, we may have recourse to such contract manufacturers.

Fitbit Force Product Recall

We established reserves for the Fitbit Force recall when circumstances giving rise to the recall became known. We considered various factors in estimating the product recall exposure.

These include estimates for:

- refunds and product returns from retailer and distributor customers and end-users, which were charged to revenue and cost of revenue on the consolidated statements of operations;
- logistics and handling fees for managing product returns and processing refunds, obsolescence of on-hand inventory, cancellation charges for existing purchase commitments and rework of component inventory by our contract manufacturers, write-offs of tooling and manufacturing equipment, which were charged to cost of revenue on the consolidated statements of operations; and
- legal fees and settlement costs, which were charged to general and administrative expenses on the consolidated statements of operations.

These factors above are updated and reevaluated each period and the related reserves are adjusted when factors indicate that the recall reserves are either insufficient to cover or exceed the estimated product recall expenses.

Business Combinations, Goodwill, and Intangible Assets

We allocate the fair value of purchase consideration to tangible assets, liabilities assumed, and intangible assets acquired based on their estimated fair values. The excess of the fair value of purchase consideration over the fair values of these identifiable assets and liabilities is allocated to goodwill. The allocation of the purchase consideration requires management to make significant estimates and assumptions, especially with respect to intangible assets. These estimates can include, but are not limited to, future expected cash flows from acquired customers, acquired technology, and trade names from a market participant perspective, useful lives, and discount rates. Management’s estimates of fair value are based upon assumptions believed to be reasonable, but which are inherently uncertain and unpredictable and, as a result, actual results may differ from estimates. During the measurement period, which is up to one year from the acquisition date, we may record adjustments to the assets acquired and liabilities assumed, with the corresponding offset to goodwill. Upon the conclusion of the measurement period, any subsequent adjustments are recorded to earnings.

We assess goodwill for impairment at least annually and whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. Consistent with our determination that we
have one reporting segment, we have determined that there is one reporting unit and test goodwill for impairment at the entity level. We test goodwill using the two-step process in accordance with ASC 350, *Intangibles—Goodwill and Other*. In the first step, we compare the carrying amount of the reporting unit to the fair value based on the fair value of our common stock. If the fair value of the reporting unit exceeds the carrying value, goodwill is not considered impaired and no further testing is required. If the carrying value of the reporting unit exceeds the fair value, goodwill is potentially impaired and the second step of the impairment test must be performed. In the second step, we would compare the implied fair value of the goodwill, as defined by ASC 350, to its carrying amount to determine the amount of impairment loss, if any.

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 property and equipment and intangible assets is not recoverable, the carrying amount of such assets is reduced to fair value. We have not recorded any such impairment charge during the years presented.

**Income Taxes**

We utilize the asset and liability method of accounting for income taxes, which requires the recognition of deferred tax assets and liabilities for expected future consequences of temporary differences between the financial reporting and income tax bases of assets and liabilities using enacted tax rates. We make estimates, assumptions, and judgments to determine our expense (benefit) for income taxes and also for deferred tax assets and liabilities and any valuation allowances recorded against our deferred tax assets. We assess the likelihood that our deferred tax assets will be recovered from future taxable income and, to the extent we believe that recovery is not likely, we establish a valuation allowance.

The calculation of our expense (benefit) for income taxes involves the use of estimates, assumptions, and judgments while taking into account current tax laws, our interpretation of current tax laws, and possible outcomes of future tax audits. We have established reserves to address potential exposures related to tax positions that could be challenged by tax authorities. Although we believe our estimates, assumptions, and judgments to be reasonable, any changes in tax law or our interpretation of tax laws and the resolutions of potential tax audits could significantly impact the amounts provided for income taxes in our consolidated financial statements.

The calculation of our deferred tax asset balance involves the use of estimates, assumptions, and judgments while taking into account estimates of the amounts and type of future taxable income. Actual future operating results and the underlying amount and type of income could differ materially from our estimates, assumptions, and judgments, thereby impacting our financial position and operating results.

We include interest and penalties related to unrecognized tax benefits within income tax expense. Interest and penalties related to unrecognized tax benefits have been recognized in the appropriate periods presented.

**Estimated Fair Value of Convertible Preferred Stock Warrants**

Warrants for shares that are contingently redeemable, such as our convertible preferred stock are accounted for as freestanding instruments. These warrants are classified as liabilities on our balance sheets and are recorded at their estimated fair value. At the end of each reporting period, changes in the estimated fair value during the period are recorded as a component of other income (expense), net. We will continue to adjust these liabilities for changes in fair value until the earlier of the expiration or the exercise of the warrants, or upon their automatic conversion into warrants to purchase common stock in connection with this offering such that they qualify for equity classification and no further remeasurement is required.
We estimate the fair values of our convertible preferred stock warrants using the Black-Scholes option-pricing model based on inputs as of the valuation measurement dates, including the fair values of our convertible preferred stock, the estimated volatility of the price of our convertible preferred stock, the expected term of the warrants, and the risk-free interest rates.

Stock-Based Compensation

Stock-based compensation is measured at the grant date based on the fair value of the award and is recognized as expense, net of estimated forfeitures, over the requisite service period, which is generally the vesting period of the respective award.

Determining the fair value of stock-based awards at the grant date requires judgment. The fair value of RSUs is the fair value of our common stock on the grant date. We use the Black-Scholes option-pricing model to determine the fair value of stock options. The determination of the grant date fair value of stock options using an option-pricing model is affected by our estimated common stock fair value as well as assumptions regarding a number of variables. These variables include the fair value of our common stock, our expected common stock price volatility over the expected life of the options, expected term of the stock option, risk-free interest rates, and expected dividends, which are estimated as follows:

Fair Value of Our Common Stock. The fair value of the shares of common stock underlying stock options has historically been established by our board of directors, which is responsible for these estimates, and has been based in part upon a valuation provided by an independent third-party valuation firm. Because there has been no public market for our common stock, our board of directors considered this independent valuation and other factors, including, but not limited to, revenue growth, the current status of the technical and commercial success of our operations, our financial condition, the stage of our development and competition to establish the fair value of our common stock at the time of grant of the option. The fair value of the underlying common stock will be determined by the board of directors until such time as our common stock is listed on a stock exchange.

Expected Term. The expected term represents the period over which we anticipate stock-based awards to be outstanding. We do not have sufficient historical exercise data to provide a reasonable basis upon which to estimate expected term due to the limited period of time stock-based awards have been exercisable. As a result, for stock options, we used the simplified method to calculate the expected term estimate based on the vesting and contractual terms of the option. Under the simplified method, the expected term is equal to the average of the stock-based award’s weighted average vesting period and its contractual term.

Volatility. Expected volatility is a measure of the amount by which the stock price is expected to fluctuate. We estimate the expected volatility of the common stock underlying our stock options at the grant date by taking the average historical volatility of the common stock of a group of comparable publicly traded companies over a period equal to the expected life of the options.

Risk-Free Rate. The risk-free interest rate is estimated average interest rate based on U.S. Treasury zero-coupon notes with terms consistent with the expected term of the awards.

Dividend Yield. We have never declared or paid any cash dividends and do not presently plan to pay cash dividends in the foreseeable future. Consequently, we used an expected dividend yield of zero.
The following table summarizes the assumptions relating to our stock options 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>2012</td>
<td>2013</td>
</tr>
<tr>
<td>Expected term (in years)</td>
<td>6.25</td>
<td>6.00 – 6.25</td>
</tr>
<tr>
<td>Volatility</td>
<td>60.0% – 60.82%</td>
<td>60.57% – 62.03%</td>
</tr>
<tr>
<td>Risk-free interest rate</td>
<td>0.95% – 1.17%</td>
<td>1.06% – 1.93%</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>—%</td>
<td>—%</td>
</tr>
</tbody>
</table>

(1) We did not grant any stock options in the three months ended March 31, 2014.

In addition, we are required to estimate the amount of stock-based compensation we expect to be forfeited based on our historical experience. The assumptions used in calculating the fair value of the stock-based awards represent management judgment. As a result, if factors change and different assumptions are used, the stock-based compensation expense could be materially different in the future.

### Common Stock Valuations

Given the absence of a public trading market of our common stock, and in accordance with the American Institute of Certified Public Accountants Accounting and Valuation Guide, *Valuation of Privately-Held Company Equity Securities Issued as Compensation*, our board of directors exercised reasonable judgment and considered numerous and subjective factors to determine the best estimate of fair value of our common stock, including independent third-party valuations of our common stock; the prices at which we sold shares of our convertible preferred stock to outside investors in arms-length transactions; the rights, preferences, and privileges of our convertible preferred stock relative to those of our common stock; our operating results, financial position, and capital resources; current business conditions and projections; the lack of marketability of our common stock; the hiring of key personnel and the experience of our management; the introduction of new products; our stage of development and material risks related to our business; the fact that the option grants involve illiquid securities in a private company; the likelihood of achieving a liquidity event, such as an initial public offering or a sale of our company given the prevailing market conditions and the nature and history of our business; industry trends and competitive environment; trends in consumer spending, including consumer confidence; and overall economic indicators, including gross domestic product, employment, inflation and interest rates, and the general economic outlook.

We performed valuations of our common stock that took into account the factors described above. We used two valuation approaches to determine the equity value of our business. The income approach estimates the fair value of a company based on the present value of the company’s future estimated cash flows and the residual value of the company beyond the forecast period. These future cash flows, including the cash flows beyond the forecast period for the residual value, are discounted to their present values using an appropriate discount rate, to reflect the risks inherent in the company achieving these estimated cash flows. The second valuation approach is the market approach. We used a combination of the guideline public company method and the guideline transaction method in applying the market approach. The guideline public company method is based upon the premise that indications of value for a given entity can be estimated based upon the observed valuation multiples of comparable public companies, the equity of which is freely-traded by investors in the public securities markets. The guideline transaction method is based upon the premise that indications of value for a given entity can be estimated based upon the valuation multiples implied by transactions involving companies that are comparable to the subject entity. We used both of these valuation approaches at each valuation date and weighted the methodologies equally. The resulting value was then allocated to shares of convertible preferred stock, common stock, warrants, and options using an option-pricing model. Additionally, we have applied a discount for lack of marketability to the value of the common stock to account for a lack of access to an active public market.

Following this offering, it will not be necessary to determine the fair value of our Class A common stock using these valuation approaches as shares of our Class A common stock will be traded in the public market.
Based on 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, the aggregate intrinsic value of stock options outstanding as of March 31, 2015 was $\_\_ million, with $\_\_\_ million related to vested stock options. In addition, we granted 194,423 RSUs to employees in March 2015 with a grant date fair value of $3.7 million.

**Quantitative and Qualitative Disclosures about Market Risk**

We are exposed to market risks in the ordinary course of our business. These risks primarily include interest rate and foreign currency risks as follows:

**Interest Rate Risk**

As of December 31, 2014 and March 31, 2015, we had cash and cash equivalents of $195.6 million and $237.8 million, respectively, which consisted primarily of bank deposits and money market funds. Such interest-earning instruments carry a degree of interest rate risk. However, historical fluctuations of interest income have not been significant.

As of December 31, 2014, we had indebtedness of $125.0 million under the Asset-Based Credit Facility and $8.0 million under the Cash Flow Facility. The borrowings under the Asset-Based Credit Facility bore interest at a rate of 4.25% as of December 31, 2014. The borrowings under the Cash Flow Facility bore interest at 3.59% as of December 31, 2014 and were repaid in March 2015. As of March 31, 2015, we had indebtedness of $160.0 million under the Asset-Based Credit Facility. The borrowings under the Asset-Based Credit Facility bore interest at a rate of 4.25% as of March 31, 2015 and were repaid in April 2015.

To date, we have not been exposed, nor do we anticipate being exposed, to material risks due to changes in interest rates. A hypothetical 10% change in interest rates during any of the periods presented would not have had a material impact on our consolidated financial statements.

**Foreign Currency Risk**

To date, all of our inventory purchases have been denominated in U.S. dollars. Our international sales are primarily denominated in foreign currencies and any unfavorable movement in the exchange rate between U.S. dollars and the currencies in which we conduct sales in foreign countries could have an adverse impact on our revenue. A portion of our operating expenses are incurred outside the United States and are denominated in foreign currencies, which are also subject to fluctuations due to changes in foreign currency exchange rates. In addition, our suppliers incur many costs, including labor costs, in other currencies. To the extent that exchange rates move unfavorably for our suppliers, they may seek to pass these additional costs on to us, which could have a material impact on our gross margins. Our operating results and cash flows are, therefore, subject to fluctuations due to changes in foreign currency exchange rates. However, we believe that the exposure to foreign currency fluctuation from operating expenses is relatively small at this time as the related costs do not constitute a significant portion of our total expenses. We recognized net gains (losses) of $(0.2) million, $(2.7) million, $0.1 million, and $(2.7) million from foreign currency gains and losses in 2013, 2014, and for the three months ended March 31, 2014 and 2015, respectively. Foreign currency gains and losses were insignificant in 2012. As we grow our operations, our exposure to foreign currency risk could become more significant. In December 2014, we entered into foreign currency exchange contracts for hedging. It is difficult to predict the effect hedging activities would have on our operating results. We analyzed our foreign currency exposure to identify assets and liabilities denominated in other currencies. A hypothetical 10% change in exchange rates between those currencies and the U.S. dollar would not have materially affected our operating results.

**Recent Accounting Pronouncements**

In May 2014, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update 2014-09, or ASU 2014-09, regarding Accounting Standards Codification Topic 606, Revenue from Contracts
with Customers. This ASU affects any entity that either enters into contracts with customers to transfer goods and services or enters into contracts for the transfer of nonfinancial assets. ASU 2014-09 will replace most existing revenue recognition guidance when it becomes effective. The standard’s core principle is that a company will recognize revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. In doing so, companies will need to use more judgment and make more estimates than under the currently effective guidance. These may include identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price and allocating the transaction price to each separate performance obligation. ASU 2014-09 is effective for annual periods beginning after December 15, 2016, including interim periods within that period. Early adoption is not permitted. The FASB recently issued an exposure draft of a proposed ASU that would delay the effective date of ASU 2014-09 by one year and allow for early adoption. We are currently evaluating the impact of this guidance on our financial statements.
LETTER FROM JAMES PARK AND ERIC N. FRIEDMAN

Over 8 years ago, in early 2007, we started Fitbit with the vision that sensors, data, and amazing software could transform the way people think about health and fitness. Success was never obvious, easy, or guaranteed, and we would like to thank everyone who joined us on the journey. Thanks to the employees of Fitbit who believed in the vision and who have worked passionately to create something incredible out of nothing. Thanks to our users who have trusted our products and our company to improve their lives. Thanks to our investors who believed in us and the opportunity.

The journey is not over and, in fact, it is just beginning. This offering is just one milestone among the many that we have reached in the past and will reach in the future. We hope that all of us will continue as we have in the past: focused on the long-term and creating and transforming while remaining humble and deeply appreciative of everything that we achieve and are given.

James and Eric
Our Mission

Fitbit helps people lead healthier, more active lives by empowering them with data, inspiration, and guidance to reach their goals.

Overview

Fitbit is transforming the way millions of people around the world achieve their health and fitness goals. The Fitbit platform combines connected health and fitness devices with software and services, including an online dashboard and mobile apps, data analytics, motivational and social tools, personalized insights, and virtual coaching through customized fitness plans and interactive workouts. Our platform helps people become more active, exercise more, sleep better, eat smarter, and manage their weight. Fitbit appeals to a large, mainstream health and fitness market by addressing these key needs with advanced technology embedded in simple-to-use products and services. We pioneered the connected health and fitness market starting in 2007, and since then, we have grown into a leading global health and fitness brand. As of March 31, 2015, we have sold over 20.8 million devices since inception. According to The NPD Group, we held the leading position in the U.S. fitness activity tracker market, with a 68% share, by dollars, in 2014. 

The core of our platform is our family of six wearable connected health and fitness trackers. These wrist-based and “clippable” devices automatically track users’ daily steps, calories burned, distance traveled, floors climbed, and active minutes and display real-time feedback to encourage them to become more active in their daily lives. Most of our trackers also measure sleep duration and quality, and our more advanced products track heart rate and GPS-based information such as speed, distance, and exercise routes. Several of our devices also feature deeper integration with smartphones, such as the ability to receive call and text notifications and control music. In addition, we offer a Wi-Fi connected scale that records weight, body fat, and BMI. We dedicate significant resources to developing proprietary sensors, algorithms, and software to ensure that our products have highly accurate measurements, insightful analytics, compact sizes, durability, and long battery lives. We are able to enhance the functionality and features of our connected devices through wireless updates.

Our platform also includes our online dashboard and mobile apps, which wirelessly and automatically sync with our devices. Our platform allows our users to see trends and achievements, access motivational tools such as virtual badges and real-time progress notifications, and connect, support, and compete with friends and family. Our direct connection with our users enables us to provide personalized insights, premium services, and information about new products and services. Premium services include virtual coaching through customized fitness plans and interactive video-based exercise experiences on mobile devices and computers. In addition, we extend the value of our platform through our open API, which enables third-party developers to create health and fitness apps that interact with our platform. Our open platform and our large community of users, we have established a growing ecosystem that includes thousands of third-party health and fitness apps that connect with our products and enhance the Fitbit experience.

* See “Industry and Market Data.”
Our platform enables all types of people to get fit their own way, whatever their interests and goals. Our users range from people interested in improving their health and fitness through everyday activities to endurance athletes seeking to maximize their performance. To address this range of needs, we design our devices, apps, and services to be easy to use so that they fit seamlessly into peoples’ daily lives or activities. Our users can sync their Fitbit devices with, and view their dashboard on, their computers and over 150 mobile devices, including iOS, Android, and Windows Phone products. This broad compatibility, combined with our market-leading position, has enabled us to attract what we believe is the largest community of connected health and fitness device users. The size of our user community increases the likelihood that our users will be able to find and engage with friends and family, creating positive network effects that reinforce our growth and user retention. In addition, data from our large community enables us to enhance our product features, provide improved insights, and offer more valuable guidance for our users.

We have rapidly grown to become a leading global health and fitness brand. We sell our products in over 45,000 retail stores and in more than 50 countries, through our retailers’ websites, through our online store at Fitbit.com, and as part of our corporate wellness offering. Our broad distribution and market-leading connected health and fitness platform have driven significant growth since our founding. In 2011, 2012, 2013, and 2014, we had revenue of $14.5 million, $76.4 million, $271.1 million, and $745.4 million, respectively, net income (loss) of $(4.3) million, $(4.2) million, $(51.6) million, and $131.8 million, respectively, and adjusted EBITDA of $(4.0) million, $(2.4) million, $79.0 million, and $191.0 million, respectively. For the three months ended March 31, 2014 and 2015, we had revenue of $108.8 million and $336.8 million, respectively, net income of $8.9 million and $48.0 million, respectively, and adjusted EBITDA of $42.0 million and $93.4 million, respectively. See the section titled “Selected Consolidated Financial and Other Data—Adjusted EBITDA” for information regarding our use of adjusted EBITDA and a reconciliation of adjusted EBITDA to net income (loss). The number of devices we sold grew from 0.2 million in 2011, to 1.3 million in 2012, to 4.5 million in 2013, and to 10.9 million in 2014, and from 1.6 million in the three months ended March 31, 2014 to 3.9 million in the three months ended March 31, 2015. We also had 0.6 million, 2.6 million, 6.7 million, and 9.5 million paid active users as of December 31, 2012, 2013, and 2014, and March 31, 2015, respectively. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Business Metrics” for additional information regarding devices sold and paid active users.
Several powerful trends are driving the growth of the connected health and fitness market:

- **Individuals and employers are increasingly focused on health and fitness.** A variety of factors, such as changing consumer lifestyles and demographics, combined with rising healthcare costs and employers’ increased emphasis on productivity, are leading individuals and employers to increasingly focus on health and fitness. Based on information from industry sources, we estimate consumers spent over $200 billion in 2014 on health and fitness services, such as gym and health club memberships, commercial weight management services, and consumer health products, such as weight management products and dietary supplements. In addition, IBISWorld estimates that the corporate wellness industry will grow from $7.4 billion in 2014 to $10.4 billion in 2018 in the United States. *

- **Advances in technology have enabled the emergence of connected devices.** Recent technological advances in sensors, lower power components, and longer-life batteries, combined with the introduction of wireless standards, such as Bluetooth low energy, have enabled the emergence of connected devices that are smaller, more power-efficient, track a broader range of biometric data, and fit a wide range of consumer preferences.

- **Mobile devices have become the preferred platform for accessing information.** The rapid and broad proliferation of smartphones and tablets has transformed the way individuals interact with applications and content online. Mobile devices have become the preferred platform for people to access information and manage their lives, as well as the primary hub to connect a variety of consumer devices. According to Gartner, by 2018 more than 50% of users will go to a tablet or smartphone first for all online activities. *

- **More individuals are turning to technology solutions to improve health and fitness.** Individuals are increasingly using mobile apps and other software to improve health and fitness, allowing consumers to directly manage and track their health and fitness in unprecedented ways. According to The NPD Group, over 25% of U.S. consumers reported using a fitness app on their smartphone. *Google also reported that health and fitness was the fastest growing app category on Google Play in 2014. Individuals are seeking to better understand their own health and fitness and achieve related goals through more personalized data and insights. Individuals want to access this information anytime and anywhere and also to connect with others for motivation and encouragement. This has driven the increase in software-based analytics and mobile apps for health and fitness, allowing consumers to directly manage and track their health and fitness in unprecedented ways.

* See “Industry and Market Data.”
Our Market Opportunity

According to IDC, consumer spend on the wearable devices market is growing faster than on any segment in the global consumer electronics market. In 2014, shipments of wearable devices more than tripled compared to the prior year, reaching a total of 21.0 million units shipped. IDC expects the market for wearable devices will reach 114.0 million units shipped in 2018, representing a $33.7 billion worldwide revenue opportunity. We believe that we have been one of the drivers of the growth of the wearable devices market, and that the future growth of this market represents a significant opportunity for us. Further, as we continue to expand our platform and as consumers increasingly view our connected health and fitness products and services as an alternative or complement to other health and wellness activities, we believe there is an opportunity to extend our addressable market to the broader health and fitness market. Based on information from industry sources, we estimate this market represents an over $200 billion opportunity and includes consumer spend on health and fitness services, such as gym and health club memberships, commercial weight management services, and consumer health products, such as weight management products and dietary supplements.

The broader health and fitness market, however, presents several challenges to overcome before we are able to take advantage of this opportunity, including competition from larger, more established traditional health and fitness companies, uncertainty as to whether consumers will adopt our products and services as an alternative or complement to other health and wellness activities, and our relative lack of experience selling other products and services.

Our Solution—The Fitbit Platform

Our leading connected health and fitness platform is designed to enable our users to improve their health and fitness by:

- **Tracking activities through our connected health and fitness devices.** We empower users to live healthier, more active lifestyles by both tracking the information that matters most to them and providing them with real-time feedback. Our connected health and fitness devices span multiple styles, form factors, and price points, addressing the needs of everyone—from people simply looking to get fit by increasing their activity levels to endurance athletes seeking to maximize their performance. Our devices, which include wrist-based and clippable fitness trackers and our Wi-Fi connected scale, feature proprietary and advanced sensor technologies and algorithms as well as high accuracy and long battery life. In addition, the ease of use and small, lightweight, and durable designs of our devices make them fit effortlessly into our users’ lifestyles.

- **Learning through our online dashboard and mobile apps.** We offer our users a personalized online dashboard and mobile apps that sync automatically with, and display data from, our connected health and fitness devices. We provide our users with a wide range of information and analytics, such as charts and graphs of their progress and the ability to log caloric intake. Both our online dashboard and mobile apps are free and work with all of our connected health and fitness devices. Our internally-developed software is regularly updated and enhanced, increasing both the utility of our health and fitness platform and overall user engagement. Our apps were ranked in the top five among Health & Fitness apps in both the iOS App Store and Google Play during 2014 and during the first quarter of 2015.

- **Staying motivated through social features, notifications, challenges, and virtual badges.** Our products help millions of users achieve their goals both individually and within the community that they choose. On an individual level, we motivate users by delivering real-time feedback, including notifications, leaderboard and challenge updates, and virtual badges. Our platform also offers users social features that allow them to receive and provide support and engage in friendly competition. Users can securely share some or all of their health and fitness information on an opt-in basis with friends, family, and other parties and compete against each other on key statistics through leaderboards and daily or multi-day fitness challenges. In addition, users can choose to share their data with thousands of third-party apps and through social networks on an opt-in basis. As users create more connections on our network, they often benefit from higher levels of fitness activity and overall value.

See “Industry and Market Data.”
from our platform, leading to stronger user engagement and retention. Users with just one or more friend on our platform take on average approximately 8% more steps per day than users with no friends on our platform and are more than twice as likely to remain active on our platform for longer than 18 months.

- **Improving health and fitness through goal-setting, personalized insights, premium services, and virtual coaching.** Our primary goal is to help our users improve their health and fitness. We believe our platform assists users in changing their daily behavior, such as eating healthier foods or going for a run or walking more to reach a goal or win a challenge. We empower our users to set their own health and fitness goals and track their progress towards these goals. We also offer premium services on a subscription basis that provide personalized insights and virtual coaching through customized fitness plans and interactive video-based exercise experiences on mobile devices and computers. Our premium services feature in-depth data analysis and personalized reports, as well as benchmarking against peers.

**Our Competitive Strengths—What Sets Us Apart**

We believe the following strengths will allow us to maintain and extend our leadership position:

- **Leading market position and global brand.** Our singular focus on building a connected health and fitness platform, coupled with our leading market share, has led to our brand becoming synonymous with the connected health and fitness category. According to The NPD Group, Fitbit devices were the highest selling fitness activity trackers in the United States in 2014, with a 68% share of the U.S. fitness activity tracker market, by dollars, up from 58% in 2013. **"We had nine of the top ten selling fitness activity trackers stock keeping units, or SKUs, in 2014, according to The NPD Group."** Since launching our first connected health and fitness device in September 2009, we have sold over 20.8 million connected health and fitness devices as of March 31, 2015, including more than 10.9 million in 2014.

- **Broad range of connected health and fitness devices.** We believe everyone’s approach to fitness is different, so we offer our users a range of connected health and fitness devices spanning multiple styles, form factors, and price points to allow people to find the devices that fit their lifestyles and goals. In addition to our wrist-based and clippable wearable health and fitness devices, we also offer a Wi-Fi connected scale that tracks weight, body fat, and BMI. We believe the breadth of our connected health and fitness devices provides us with a competitive advantage over our competitors, which often have a more limited line of products.

- **Advanced, purpose-built hardware and software technologies.** Our connected health and fitness devices leverage industry-standard technologies, such as Bluetooth low energy, as well as proprietary technologies, such as our PurePulse continuous heart rate tracking, and our algorithms that more accurately measure and analyze user health and fitness metrics. We devote significant resources to ensure that our devices effortlessly fit into our users’ lifestyles. For example, we design our small, lightweight, durable, and fashionable products to be optimized for power efficiency, which enables automatic wireless data syncing without compromising battery life. We place a similarly strong emphasis on our online dashboard and mobile apps to provide users with visualization of their progress and personalized guidance. Our highly-scalable cloud infrastructure enables millions of users around the world to engage with our platform in real-time.

- **Broad mobile compatibility and open API.** Our broad mobile compatibility and open API enable a large and growing health and fitness ecosystem that provides additional value to our existing users and extends our reach to potential new users. Our users can sync their Fitbit devices with, and view their online dashboard on, their computers and over 150 mobile devices, including iOS, Android, and Windows Phone products. This broad compatibility, combined with our market-leading position, has enabled us to build what we believe is the largest community of connected health and fitness device users. It also maximizes our addressable market as our connected health and fitness devices and mobile apps operate on more consumer devices. Additionally, we enable seamless integration with thousands

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*See “Industry and Market Data.”*
of apps across iOS, Android, and Windows Phone through our open API, which allows our users to share data with third-party apps on an opt-in basis. During March 2015, our platform received on average over 200 million daily API requests from third-party apps and sent on average over 50 million daily API requests to third-party APIs, which demonstrates the breadth of our health and fitness ecosystem.

- **Broad and differentiated go-to-market strategy.** We have developed a broad go-to-market strategy that reaches individuals regardless of where they shop. We sell our products in over 45,000 retail stores and in more than 50 countries, through our retailers’ websites, through our online store at Fitbit.com, and as part of our corporate wellness offering. We believe the breadth and depth of our established selling channels and prominent presence in retail stores are unmatched in the connected health and fitness category and would be difficult for a competitor to replicate.

- **Large and growing community and powerful network effects.** The total number of registered users on our platform has grown from 1.1 million as of December 31, 2012, to 4.5 million as of December 31, 2013, to 14.6 million as of December 31, 2014, and to 19.0 million as of March 31, 2015. We believe the size and engagement of our community of users makes it more likely that users can connect with friends and family and attracts many new users to our platform. Each of our users add value to our platform by making progress towards their goals and syncing their data with our platform, which we leverage to provide better insights for our users. As our community of users continues to grow, we will develop a deeper understanding of our users and expect to deliver additional value to them through more detailed insights and analysis. We believe the growth and scale of our user community increases retention as users become not only more engaged with personalized and relevant content, but also less likely to leave a community in which many of their friends and family are active members.

- **Direct relationship and continuous communication with our users.** The connectivity of our devices allows us to better understand our users’ health and fitness goals. This connectivity also allows us to communicate the most relevant analysis, features, advice, and content to our users throughout the day with our online dashboard, mobile apps, emails, and notifications. We also utilize these communication channels to help our users become aware of our new products and services.

**Our Growth Strategy**

We intend to maintain and extend our position as the leading platform for connected health and fitness. Key elements of our growth strategy include:

- **Continue to introduce innovative products.** We will continue to develop the world’s most innovative and diverse connected health and fitness devices. Furthermore, we plan to continue to make significant investments in research and development to further strengthen our platform through both internally-developed and acquired technologies. In 2013 and 2014, we introduced five new connected health and fitness devices and added features including automatic sleep detection, heart rate tracking, call and text notifications, music control, and GPS tracking for speed, distance, and exercise routes.

- **Introduce new features and services.** We will continue to introduce innovative new features and services to increase user engagement and revenue. We believe that new features, such as heart rate tracking and automatic sleep detection, allow us to attract new users to our platform and also increase overall user satisfaction. We will also continue to enhance our online dashboard and mobile apps, provide greater personalized guidance, and additional premium services offerings. For example, we acquired FitStar in March 2015 to enhance our software and services offerings through interactive video-based exercise experiences on mobile devices and computers.

- **Expand brand awareness and drive sales of our products and services.** We intend to increase our marketing efforts to further expand global awareness of our brand and drive greater sales of our products and services. We intend to increase our global advertising efforts as well as seek new partnerships, such as our partnership with Tory Burch, to extend our brand’s reach and addressable market.
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• Increase global distribution through select new channels. We believe that international markets represent a significant growth opportunity for us and we intend to expand sales of our products and services globally through select retailers and strategic partnerships.

• Further penetrate the corporate wellness market. We intend to increase our focus on building relationships with employers and wellness providers and increase revenue through employee wellness programs. The corporate wellness market for connected health and fitness devices is new and is subject to a variety of challenges, including whether employers will continue to invest in such programs, long sales cycles, and substantial upfront sales costs. However, we believe that as healthcare costs continue to rise and as employers continue to seek ways to keep their employees active, engaged, and productive, more employers will implement or enhance their corporate wellness programs. In order to grow our corporate wellness presence, we intend to enhance our corporate wellness offering as well as expand our sales team focused on this market.

Our Users

We aim to empower all people to improve their health and fitness, whatever their lifestyle or goals. Our community of users generally falls into three fitness levels and we design and market our products to them accordingly:

Everyday users represent our largest group of users. These users are looking to incorporate more activity into their daily routines as the primary means to improve their overall fitness through everyday activities, such as walking more or taking the stairs instead of the elevator. They are most interested in receiving feedback on daily activity measures such as steps, distance, calories burned, and active minutes. We primarily market the Fitbit Zip, Fitbit One, Fitbit Flex, and Fitbit Charge to Everyday users.

Active users exercise regularly to reach their fitness goals through activities such as running, using cardio equipment, and playing sports recreationally. As a result, these users are often interested in monitoring exercise intensity through heart rate tracking in addition to activity tracking. We primarily market the Fitbit Charge HR to Active users.

Performance users train regularly to improve their performance and achieve their personal bests. These users participate in endurance sports and fitness activities with higher intensity and longer duration, such as interval or distance running and cycling, and thrive on personal improvement and competition. Accordingly, these users are interested in GPS tracking of speed, distance, and exercise routes, in addition to heart rate and daily activity tracking. We primarily market the Fitbit Surge to Performance users.
What Our Connected Health and Fitness Devices Track

With each successive product offering, we have expanded the features and accuracy of our products and now track the following measures:

- **Steps.** The cornerstone of our initial product offering, our trackers use accelerometers and proprietary algorithms that count the number of steps taken throughout their day.
- **Calories burned.** Our users can estimate the amount of calories burned throughout the day based on several methods depending on the tracker. We believe our more advanced devices that use our PurePulse heart rate tracking technology provide a more accurate estimate of calorie burn than non-PurePulse based products.
- **Distance traveled.** Our users can track the distance they have traveled throughout the day as a function of the number of steps they have taken throughout the day or through built-in GPS, depending upon the tracker.
- **Heart rate.** On trackers that are outfitted with our proprietary PurePulse technology, our users are able to automatically and continuously track their heart rate during everyday activity and exercise. Our PurePulse technology uses wrist-based optical LEDs, which measures heart rate using light reflection. We believe our PurePulse technology makes heart rate relevant as a means to more accurately measure calorie burn, maintain intensity during exercise, and train more effectively by using heart rate zones. Additionally, our heart rate tracking technology can conveniently provide our users with their resting heart rate, which is a widely used indicator of cardiovascular fitness and conditioning.
- **Floors climbed.** Using a built-in altimeter sensor, our users are able to track flights of stairs climbed, which encourages users to take the stairs instead of using an escalator or elevator.
- **Sleep duration and quality.** Users can track their sleep duration and quality on many of our connected health and fitness trackers, including restless and awake episodes throughout the night. Our newer trackers allow users to track this data automatically.
- **Active minutes.** Our trackers detect the number of minutes our users are more active. The Centers for Disease Control recommends that people strive for 150 minutes of moderate-intensity aerobic activity per week.
- **GPS-based tracking.** Our Fitbit Surge allows our users to track their speed, distance, and exercise routes using the GPS capability integrated into the device during activities such as running, cycling, hiking, and walking. For those without Fitbit Surge, our mobile apps provide GPS tracking using the phone’s GPS capability.
- **Weight, body fat, and BMI.** Our Fitbit Aria Wi-Fi connected scale allows users to track weight, BMI, lean mass, and body fat percentage separately and privately for up to eight users, helping individuals to track progress towards and achieve their body composition goals.
- **Caloric intake.** Through our mobile apps, we provide a database with more than 300,000 specific food items that can be searched and tracked. Users can log food consumption and set calorie budgets based on their caloric intake and daily activity to achieve a desired weight goal.

Our Devices

We believe everyone’s approach to fitness is different, so we have created products with a wide variety of styles, sizes, features, and price points.

**Fitbit Zip** is our entry-level wireless activity tracker for Everyday users that allows them to track the most important daily activity statistics such as steps, distance, calories burned, and active minutes. As a clipperable tracker, Fitbit Zip can be worn discreetly in a pocket or on a belt. We offer the Fitbit Zip in five colors with a replaceable watch battery that lasts up to six months. Fitbit Zip has a U.S. MSRP of $59.95.
**Fitbit One** is a more advanced clippable wireless tracker for Everyday users that tracks stairs climbed and sleep in addition to daily steps, distance, calories burned, and active minutes. Fitbit One also has a silent alarm that gently vibrates to wake users at a desired time. Fitbit One is available in two colors and offers a rechargeable battery that lasts ten to fourteen days. Fitbit One has a U.S. MSRP of $99.95.

**Fitbit Flex** is our first wristband-style tracker, with a sleek and stylish design intended for Everyday users. Fitbit Flex tracks steps, distance, calories burned, active minutes, and sleep. Fitbit Flex also has a silent alarm that gently vibrates to wake users at a desired time. We believe that our wristband users, as compared to our clippable tracker users, are more open to wearing an activity tracker in a visible location and more interested in easy and quick access to information. Fitbit Flex features LED lights to show users’ progress towards their primary daily goal, with each light representing the achievement of 20% of their goal. We also offer users the ability to change wristbands for different colors to match their mood or personal style. Fitbit Flex is available in ten colors and its rechargeable battery lasts up to five days. Fitbit Flex has a U.S. MSRP of $99.95.

**Fitbit Charge** is our premier wireless activity and sleep wristband for Everyday users that we began selling in October 2014. It tracks steps, distance, calories burned, active minutes, floors climbed, and sleep. Designed for users who want instant access to activity statistics during their day, Fitbit Charge features a bright OLED display that shows users’ daily activity and time of day, as well as incoming caller ID notifications when the device is paired with the user’s phone. Fitbit Charge tracks sleep automatically and similar to the Fitbit Flex and Fitbit One, offers a silent wake alarm. Fitbit Charge is available in four colors and three sizes and is powered by a rechargeable battery that lasts seven to ten days. Fitbit Charge has a U.S. MSRP of $129.95.

**Fitbit Charge HR** is a wireless heart rate and activity wristband for Active users that we began selling in December 2014. Fitbit Charge HR offers all the features available on the Fitbit Charge and also includes our proprietary PurePulse heart rate tracking technology. Fitbit Charge HR is available in two colors and three sizes, and uses a rechargeable battery that lasts up to five days. Fitbit Charge HR has a U.S. MSRP of $149.95.

**Fitbit Surge** is our fitness “super watch” for Performance users that we began selling in December 2014. It combines popular features of a GPS watch, heart rate tracker, activity tracker, and smartwatch. On its touch screen LCD display, Fitbit Surge displays real-time statistics from its built-in GPS tracker such as speed, distance, and exercise routes. Fitbit Surge incorporates our PurePulse heart rate technology and can track heart rate during a variety of distinct cardiovascular workouts and other exercises. It is also designed with advanced smartwatch features, including text and call notifications and music control. Like our other trackers, it measures daily activities such as steps, distance, calories burned, floors climbed, and active minutes and automatically tracks sleep at night. Fitbit Surge is available in three colors and three sizes and incorporates a rechargeable battery that lasts up to seven days. Fitbit Surge has a U.S. MSRP of $249.95.
Fitbit Aria is our Wi-Fi connected scale that tracks weight, body fat percentage, and BMI. Fitbit Aria identifies users and shows their weight and body fat percentage on its easy-to-read display. The device recognizes up to eight individual users separately and privately. Fitbit Aria is available in two colors and runs on standard AA batteries. Fitbit Aria has a U.S. MSRP of $129.95.

**Fitbit Accessories** include colored bands for Fitbit Flex, colored clips for Fitbit One and Fitbit Zip, device charging cables, wireless sync dongles, band clasps, sleep bands, and Fitbit apparel. In addition, our partner Tory Burch offers a pendant and wristband accessory collection for Fitbit Flex. These accessories are offered at U.S. MSRPs ranging from $4.95 to $195.00.
Our Interactive Experience

**Fitbit online dashboard and mobile apps.** We offer our users a personalized online dashboard and mobile apps that sync automatically with, and display real-time data from, our connected health and fitness devices. Through these offerings, we provide users with charts and graphs of their progress, deeper analysis of their activities, and the ability to log caloric intake. Additionally, we motivate users through real-time feedback including notifications, leaderboard and challenge updates, and virtual badges. Our platform also offers users social features, such as leaderboards and challenges, that allow users to receive and provide support and engage in friendly competition. Our online dashboard and mobile apps are available for free through the iOS App Store, Google Play, Windows Store, and on Fitbit.com.

**Fitbit Premium** is our premium membership that serves as a 24/7 virtual personal trainer delivered to users through any web browser. The program features personalized and dynamic 12 week fitness plans to gradually increase activity levels. It also includes personalized reports and analysis of weekly data accompanied by recommended health and fitness targets and comparisons against peer benchmarks for weight, activity, and sleep. Fitbit Premium is offered on a subscription basis for U.S. $49.99 per year.
FitStar. In March 2015, we acquired FitStar, a provider of interactive video-based exercise experiences on mobile devices and computers that utilize proprietary algorithms to adjust and customize workouts for individual users based on data gathered during their workouts. Through our FitStar offerings, we provide exercise programs through personal trainer and yoga apps that continuously adjust to our users based on feedback throughout the workout. FitStar is offered monthly for U.S. $7.99 or on an annual subscription basis for U.S. $39.99 per year.

Compatibility and Wireless Syncing

In order to reach the widest set of users and facilitate a strong social experience on our platform, we focus on ensuring that our devices are compatible with a broad range of mobile devices and operating systems. Currently, our users can sync their Fitbit devices with, and use their online dashboard on, over 150 mobile devices including iOS, Android, and Windows Phone operating systems. Additionally, our users can access their online dashboard through a web browser on any smartphone, tablet, PC, or Mac.
Our connected health and fitness trackers wirelessly sync with our online dashboard and mobile apps through Bluetooth low energy technology. This power efficient technology enables our devices to sync with our mobile apps automatically, allowing us to provide users with real-time feedback and notifications. For syncing our fitness trackers with computers, we include a Bluetooth low energy wireless sync dongle with each fitness tracker that plugs into any computer’s USB port. Our Fitbit Aria Wi-Fi connected scale syncs data wirelessly and automatically with users’ computers through their home Wi-Fi network. The combination of our cross-platform compatibility and wireless syncing capabilities provides our users with the most seamless connected health and fitness experience in the market and differentiates us from our competitors, which may only sync to a single mobile operating system, such as iOS, or to a more limited number of Android mobile devices, or not to computers at all.

Our Commitment to Privacy

We take privacy seriously and offer our users high levels of privacy and security. We are committed to respecting our users’ privacy, letting our users decide how their information is used and shared, and keeping their data safe.

We have developed our data collection and use practices in accordance with the Fair Information Practice Principles, more commonly known as FIPPs. We are committed to the following privacy principles as outlined in our privacy policy:

• Limited Collection. We only collect data that is useful to improving our products, services, and user experience.

• Transparent and Easy to Understand Policies. We are transparent about our data practices and explain them in clear language.

• No Unexpected Uses. We never sell user data or use it other than as described in our privacy policy.

• Clear Notice and Consent. We only share personally identifiable data with third parties, including employers, when our users consent to the sharing and under the limited circumstances outlined in our privacy policy where users’ personally identifiable data can be shared without specific consent, such as our receipt of search warrants or subpoenas from law enforcement agencies or in response to a validly issued legal process in a civil litigation matter. We do not currently share information such as heart rate data or geolocation data with employers under our corporate wellness offerings and do not intend to share such data in the future without specific user consent.

• Prioritize Security. We take the security of our users’ data seriously. We use a combination of technical and administrative security controls to maintain the security of user data.

Our platform enables users to share information from Fitbit on an opt-in basis with friends, family, and other parties. Users may link their Fitbit accounts to third-party apps, send status updates on social networks, such as Facebook and Twitter, or share certain data with employers as part of a corporate wellness program. We allow our users to revoke their consent to share data with third parties at any time using their Fitbit account settings. If users choose to share their data with a third party, the data is governed by the privacy policy of the third party.

Research and Development

We are passionate about developing innovative products and services that empower our users to reach their health and fitness goals. We believe our future success depends on our ability to develop new products and features that expand the versatility and performance of our existing platform and we plan to continue to invest significant resources to enhance performance, functionality, and convenience and style for our users.

Our global research and development team supports the design and development of our connected health and fitness devices, proprietary sensors, firmware, data algorithms, and online dashboard and mobile apps. The team is comprised of dedicated research employees, electrical engineers, mechanical engineers, firmware
engineers, site operations engineers, and mobile app developers. Our research and development team is primarily based at our headquarters in San Francisco, California as well as several other worldwide locations.

Our research and development expenses were $16.2 million, $27.9 million, and $54.2 million, for 2012, 2013, and 2014, respectively, and $9.1 million and $22.4 million for the three months ended March 31, 2014 and 2015, respectively.

**Manufacturing, Logistics and Fulfillment**

We outsource the manufacturing of our products to several contract manufacturers, including Flextronics which is our primary contract manufacturer. These contract manufacturers produce our products in their facilities located in Asia. The components used in our products are sourced either directly by us or on our behalf by our contract manufacturers from a variety of component suppliers selected by us and located worldwide. Our operations employees coordinate our relationships with our contract manufacturers and component suppliers. We believe that using outsourced manufacturing enables greater scale and flexibility at lower costs than establishing our own manufacturing facilities. We evaluate on an ongoing basis our current contract manufacturers and component suppliers, including, whether or not to utilize new or alternative contract manufacturers or component suppliers.

Under our agreement with Flextronics, Flextronics manufactures certain of our products using design specifications, quality assurance programs, and standards that we establish. We pay for and own all tooling and other equipment specifically required to manufacture our products and have purchase commitments based on our purchase orders and demand forecasts for certain amounts of finished goods, works-in-progress, and components purchased in order to support such purchase orders and forecasts. The agreement has an initial term of one-year that ends in March 2016, and automatically renews for successive one-year terms unless either party provides at least 90 days prior written notice. We may terminate for convenience upon providing at least 90 days prior written notice and Flextronics may terminate for convenience upon providing at least 180 days prior written notice.

We work with third-party fulfillment partners that deliver our products from multiple locations worldwide, which allows us to reduce order fulfillment time, reduce shipping costs, and improve inventory flexibility.

**Sales Channels and Customers**

We sell our products through three primary channels:

- **Retail channel.** We offer our products in over 45,000 retail stores and in more than 50 countries. We focus on building close relationships with our retailers, working with them to merchandise our products in a compelling manner both in-store and on their e-Commerce sites, promote our products through their marketing efforts, and educate their sales forces about our products.
  - **Consumer electronics and specialty retailers.** Our products are sold by retailers with a large domestic and international presence such as Best Buy.
  - **e-Commerce retailers.** Our products are sold on Amazon.com, in addition to e-Commerce sites of our retailers.
  - **Mass merchant, department store, and club retailers.** Our products are sold by large retailers, including Costco, Target, and Walmart.
  - **Sporting goods and outdoors retailers.** Our products are sold by sporting goods and outdoors retailers, including Dick’s Sporting Goods, REI, and The Sports Authority.
  - **Wireless carriers.** Our products are sold by wireless carriers, including AT&T, Sprint, and Verizon.

- **Consumer direct channel.** We sell our full line of products directly to consumers in the United States and other countries through our online store at Fitbit.com. We drive consumers to our website through online and offline advertising as well as marketing promotions.

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Corporate wellness channel. We offer products and services to employers looking to enhance their employee wellness programs. We sell our corporate wellness offering directly to employers or through partners, such as wellness program providers and insurance companies. Through our corporate wellness offering employers can purchase our products in bulk for their employees. We also offer a range of other services to maximize wellness program success, such as easy employee onboarding, an engaging employee leaderboard, real-time group reporting for company administrators, and employee insight into progress towards program goals. We can also integrate with our partners’ existing wellness programs.

Marketing and Advertising

Our marketing and advertising programs are focused on building global brand awareness, increasing product adoption, and driving sales. Our marketing and advertising efforts target a wide range of consumers and leverage traditional advertising methods (including television, cinema, and print magazines), sponsorships and public relations, digital marketing, channel marketing, and endorsements by professional athletes and celebrities.

Our in-store merchandising strategy focuses on our POP displays. We provide retailers with freestanding, in-line, and endcap POP displays of varying sizes. These displays communicate our marketing messages, present our products and their features and, in many cases, allow consumers to try on our devices and view an interactive app that enables them to learn more about our products.

Intellectual Property

Intellectual property is an important aspect of our business, and we seek protection for our intellectual property as appropriate. We rely upon a combination of patent, copyright, trade secret, and trademark laws and contractual restrictions, such as confidentiality agreements and licenses, to establish and protect our proprietary rights.

As the leader in the fast-growing market for connected health and fitness devices, we have developed a significant patent portfolio to protect certain elements of our proprietary technology. As of March 31, 2015, we had 77 issued patents and 132 patent applications pending in the United States. We continually review our development efforts to assess the existence and patentability of new intellectual property. We pursue the registration of our domain names and trademarks and service marks in the United States and in certain locations outside the United States. To protect our brand, as of March 31, 2015, we had an international trademark portfolio comprised of 65 registered trademarks and 139 trademark applications pending with filings in 68 countries.
Competition

We hold a leading market position in the U.S. fitness activity tracker market, with a 68% share, by dollars, in 2014, according to The NPD Group. However, the market for connected health and fitness devices is both evolving and competitive. The connected health and fitness devices category has a multitude of participants including specialized consumer electronics companies such as Garmin, Jawbone, and Misfit, and traditional health and fitness companies such as adidas and Under Armour. In addition, many large, broad-based consumer electronics companies either compete in our market or adjacent markets or have announced plans to do so, including Apple, Google, LG, Microsoft, and Samsung. For example, Apple has recently introduced the Apple Watch smartwatch, with broad-based functionalities, including some health and fitness tracking capabilities. We also compete with a wide range of stand-alone health and fitness-related mobile apps that can be purchased or downloaded through mobile app stores.

The principal competitive factors in our market include:

- brand awareness and focus;
- breadth of product offerings;
- battery life, sensor technology, and tracking features;
- online and mobile app experience;
- strength of sales and marketing efforts; and
- distribution strategy.

We believe we compete favorably with our competitors on the basis of these factors as a result of our leading market position and global brand, advanced and proprietary sensor technologies, software-driven online dashboard and mobile apps, our motivational and social tools, and our premium software offerings. By offering a broad range of products spanning styles and affordable price points and cross-platform compatibility, we empower a wide range of individuals with different fitness routines and goals that are difficult for other competitors to address. Moreover, our singular focus on building a connected health and fitness platform, coupled with a leading market share, has led to our brand becoming synonymous with the connected health and fitness category. This singular focus on health and fitness has driven us to dedicate significant resources to developing proprietary sensors, algorithms, and software to ensure that our products, which are specifically oriented towards health and fitness, have accurate measurements, insightful analytics, compact sizes, durability, and long battery lives. We believe this singular focus allows us to compete favorably with companies that have introduced or have announced plans to introduce devices with broad-based functionalities, including health and fitness tracking capabilities, which are not necessarily optimized for health and fitness usage. Furthermore, our platform and open API have together enabled us to establish a large and growing health and fitness ecosystem that not only provides additional value to our existing users, but also extends our reach to potential new users. This broad compatibility, combined with our market-leading position, has enabled us to attract what we believe is the largest community of connected health and fitness device users, making it more likely that users can connect with friends and family and creating positive network effects that reinforce our growth and user retention.

Employees

As of December 31, 2012, 2013, and 2014, and March 31, 2015, we had 115, 222, 469, and 579 global employees, respectively. We have not experienced any work stoppages. We consider our relationship with our employees to be good.

Facilities

We are a global company with our corporate headquarters located in San Francisco, California. This facility comprises approximately 92,000 square feet of space. Our current lease, entered into in September 2013, expires

* See “Industry and Market Data.”
in April 2020 with the option to extend the term of the lease for an additional five years. We also lease additional office space in San Francisco and around the world.

**Legal Proceedings**

From time to time, we may become involved in legal proceedings or be subject to claims arising in the ordinary course of our business. We are not presently a party to any legal proceedings that in the opinion of our management, if determined adversely to us, would individually or taken together have a material adverse effect on our business, operating results, financial condition, or cash flows.
MANAGEMENT

Executive Officers and Directors

The following table provides information regarding our executive officers and directors as of , 2015.

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<tr>
<th>Name</th>
<th>Age</th>
<th>Position(s)</th>
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<tr>
<td><strong>Executive Officers</strong></td>
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<tr>
<td>James Park</td>
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<td>President, Chief Executive Officer, and Chairman</td>
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<td>Eric N. Friedman</td>
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<td>Chief Technology Officer and Director</td>
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<td>William Zerella</td>
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<td>Chief Financial Officer</td>
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<td>Hansgregory C. Hartmann</td>
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<td>Chief Operations Officer</td>
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<td>Andy Missan</td>
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<td>Vice President and General Counsel</td>
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<td>Timothy Roberts</td>
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<td>Vice President, Interactive</td>
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<td>Edward M. Scal</td>
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<td>Chief Revenue Officer</td>
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<td><strong>Non-Employee Directors</strong></td>
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<td>Jonathan D. Callaghan</td>
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<td>Director</td>
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<tr>
<td>Steven Murray</td>
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<td>Director</td>
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<tr>
<td>Christopher Paisley</td>
<td>62</td>
<td>Director</td>
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* Lead independent director.
(1) Member of the audit committee.
(2) Member of the compensation committee.
(3) Member of the nominating and governance committee.

James Park is our co-founder and has served as a member of our board of directors since March 2007, as our Chairman since May 2015, and as our President and Chief Executive Officer since September 2007. Previously, Mr. Park served as a Director of Product Development at CNET Networks, Inc., an online media company. Prior to CNET Networks, Mr. Park served as the President and a co-founder of Wind-Up Labs, Inc., an online photo sharing company acquired by CNET Networks in April 2005. He was also Chief Technology Officer and a co-founder of Epesi Technologies, Inc., a software company. Mr. Park attended Harvard College where he studied computer science. Mr. Park was selected to serve as a member of our board of directors due to the perspective and experience he brings as our co-founder, President, and Chief Executive Officer.

Eric N. Friedman is our co-founder and has served as a member of our board of directors since March 2007 and as an executive officer since September 2007, including most recently as our Chief Technology Officer. Previously, Mr. Friedman served as an engineer manager at CNET Networks. Prior to CNET Networks, Mr. Friedman served as a co-founder of Wind-Up Labs, a founding engineer of Epesi Technologies, and a technical member of the Real-Time Collaboration Group at Microsoft Corporation. Mr. Friedman holds a B.S. and an M.S. in computer science from Yale University. Mr. Friedman was selected to serve as a member of our board of directors due to the perspective and experience he brings as our co-founder and Chief Technology Officer.

William Zerella has served as our Chief Financial Officer since June 2014. From October 2011 to June 2014, Mr. Zerella served as Chief Financial Officer of Vocera Communications, Inc., a publicly held wireless healthcare communications company. Prior to Vocera, from July 2006 to September 2011, Mr. Zerella served as...
Chief Financial Officer for Force10 Networks Inc., a networking company acquired by Dell Inc. Prior to Force10, Mr. Zerella served as Chief Financial Officer at Infinera Corporation, a telecom equipment provider, and Chief Financial Officer at Calient Networks, Inc., an optical equipment provider. Mr. Zerella has also held various other senior financial and business management positions at several companies, including GTECH Corporation and Deloitte & Touche LLP. Mr. Zerella holds a B.S. in accounting from the New York Institute of Technology and an M.B.A. from the Leonard N. Stern School of Business at New York University.

Hansgregory C. Hartmann has served as our Chief Operations Officer since February 2011. From April 2010 to February 2011, Mr. Hartmann served as Chief Operations Officer of Skyline Solar, Inc., a supplier of solar energy systems. From February 2009 to July 2009, Mr. Hartmann served as Vice President of Operations at Element Labs, Inc., a manufacturer of LED technology, and from August 2009 to March 2010 as Vice President of Operations and Hardware Engineering at Element Labs. After Element Labs was acquired by Barco N.V. in March 2010, Mr. Hartmann served as Vice President and General Manager of Barco Video Lighting Solutions until April 2010. Mr. Hartmann previously served as Senior Vice President of Operations at Dash Navigation, Inc., a provider of automotive GPS solutions, Senior Vice President of Operations at OQO, Inc., a computer hardware company, Vice President of Operations at Wave7 Optics, Inc., an optical networks company, Vice President of Operations at Force10 Networks, Vice President of Operations at ConvergeNet Technologies, Inc., a data storage company, and Vice President of Manufacturing Operations at JetFax, Inc., an internet fax services company. Prior to JetFax, Mr. Hartmann served for approximately 15 years in various quality, operations, and marketing management roles at Hewlett-Packard Company, an information technology company. Mr. Hartmann holds a B.S. in electrical engineering from New Jersey Institute of Technology and an M.S. in manufacturing systems engineering from Stanford University.

Andy Missan has served as our Vice President and General Counsel since March 2013. From July 2009 to October 2012, Mr. Missan served as Vice President and General Counsel at Bytemobile, Inc., a mobile video optimization company. Prior to Bytemobile, Mr. Missan served as Vice President and General Counsel of MobiTV, Inc., a provider of mobile video solutions, Vice President and General Counsel of Danger, Inc., a mobile devices and services company, and Vice President and General Counsel of Replay TV, Inc., a DVR technology company. He has also held senior legal and business affairs positions at the RCA Records Label/BMG Entertainment and Sony Music Entertainment Inc. Mr. Missan holds a B.A. in government from Oberlin College and a J.D. from Northwestern University School of Law.

Timothy Roberts has served as our Vice President, Interactive since September 2010. From July 2007 to September 2010, Mr. Roberts served as the founder and Chief Executive Officer of Infectious, LLC, a print-on-demand platform. Prior to Infectious, Mr. Roberts served as the Vice President of Product and Marketing at Odeo, Inc., a podcasting company, Senior Director of Product Management at Yahoo! Inc., an internet company, Vice President of Product Management and co-founder of Bigstep.com, a hosting company acquired by Affinity Internet in 2002, and Director of Products at T/Maker Company, a personal computer software company acquired by Deluxe Corporation in 1994. Mr. Roberts holds a B.A. in psychology from Vassar College.

Edward M. Scal has served as our Chief Revenue Officer since October 2010. From November 2007 to October 2010, Mr. Scal served as a partner at Avanti Growth Partners, a private equity and consulting firm. Prior to Avanti, Mr. Scal served as Executive Vice President and a member of the board of directors of CamelBak Products LLC, an outdoor equipment company, Senior Vice President at Kranasco Partners LLP, a private equity firm, Director of Business Development at Kranasco Group Companies, a toy company, Director of Development at Visa International, a financial services company, Product Manager at General Mills, a food products company, and as an analyst at Cambridge Associates. Mr. Scal holds a B.A. in history from Williams College and an M.B.A. from Stanford Business School.

Non-Employee Directors

Jonathan D. Callaghan has served as a member of our board of directors since September 2008. Mr. Callaghan is a founder and has served as a Managing Partner of True Ventures, a venture capital firm, since.
January 2006. Prior to True Ventures, Mr. Callaghan served as a Managing Director at Globespan Capital, a venture capital firm, and as a Managing Partner at CMGI Ventures, CMGI Inc.’s affiliated venture capital group. Prior to this, Mr. Callaghan worked for AOL Inc.’s Greenhouse, the venture capital/incubator for AOL, and as an associate at Summit Partners. Mr. Callaghan holds an A.B. in government from Dartmouth College and an M.B.A. from Harvard Business School. Mr. Callaghan was selected to serve as a member of our board of directors due to his extensive experience with technology companies.

Steven Murray has served as a member of our board of directors since June 2013. Mr. Murray is a Partner at SoftBank Capital, a venture capital firm, where he has worked since April 1996. Prior to this, Mr. Murray worked for Deloitte & Touche LLP where he specialized in serving high growth technology based businesses. Mr. Murray also serves on the board of directors of a number of private companies. Mr. Murray holds a B.S. in accounting from Boston College. Mr. Murray was selected to serve as a member of our board of directors due to his extensive experience with technology companies.

Christopher Paisley has served as a member of our board of directors since January 2015. Mr. Paisley has served as the Dean’s Executive Professor of Accounting at the Leavey School of Business at Santa Clara University since January 2001. Prior to this, Mr. Paisley served as Senior Vice President of Finance and Chief Financial Officer for 3Com Corporation, a digital electronics manufacturer. Mr. Paisley currently serves on the boards of directors of Ambarella, Inc., Bridge Capital Holdings, Control4 Corporation, Equinix, Inc., Fortinet, Inc., and YuMe, Inc. He also previously served as a director of 3PAR Inc. and Volterra Semiconductor Corporation. Mr. Paisley holds a B.A. in business economics from the University of California, Santa Barbara and an M.B.A. from the Anderson School at the University of California, Los Angeles. Mr. Paisley was selected to serve as a member of our board of directors due to his extensive experience in the financial services industry and academia.

Election of Officers

Our executive officers are elected by, and serve at the discretion of, our board of directors. There are no familial relationships among our directors and executive officers.

Board of Directors Composition

Current Board of Directors

Under our second amended and restated bylaws as in effect prior to the completion of this offering, our board of directors may set the authorized number of directors. Our board of directors has set the authorized number of directors as seven. Our board of directors currently consists of five members with two vacancies.

Pursuant to our third amended and restated voting agreement dated as of June 6, 2013, Messrs. Park, Friedman, Callaghan, Murray, and Paisley have been designated to serve as members of our board of directors. Pursuant to that agreement, Messrs. Park and Friedman were designated as the representatives of our common stock, Mr. Callaghan was designated as the representative of our Series A-1 convertible preferred stock, Mr. Murray was designated as the representative of our Series D convertible preferred stock, and Mr. Paisley was designated jointly by the holders of our common stock and convertible preferred stock as an independent director. The amended and restated voting agreement will terminate in connection with this offering and there will be no contractual obligations regarding the election of our directors. After this offering, the number of directors will be fixed by our board of directors, subject to the terms of our restated certificate of incorporation and restated bylaws that will become effective immediately prior to the completion of this offering. Currently serving members of our board of directors will continue to serve as directors until their death, resignation, or removal or until their successors are duly elected by the holders of our common stock.
Classified Board of Directors

Our restated certificate of incorporation that will be in effect immediately prior to the completion of this offering provides that, immediately after the completion of this offering, our board of directors will be divided into three classes with staggered three-year terms. Upon expiration of the term of a class of directors, directors for that class will be elected for three-year terms at the annual meeting of stockholders in the year in which that term expires. As a result, only one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms. Each director’s term continues until the election and qualification of his or her successor, or his or her earlier death, resignation, or removal. Our current directors will be divided among the three classes as follows:

- the Class I directors will be Messrs. Callaghan and Murray, and their terms will expire at the annual meeting of stockholders to be held in 2016;
- the Class II directors will be Messrs. Paisley and Friedman, and their terms will expire at the annual meeting of stockholders to be held in 2017; and
- the Class III director will be Mr. Park, and his term will expire at the annual meeting of stockholders to be held in 2018.

So long as our board of directors is classified, only our board of directors may fill vacancies on our board. Any additional directorships resulting from an increase 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 directors.

The classification of our board of directors may have the effect of delaying or preventing changes in our control or management. See the section titled “Description of Capital Stock—Anti-Takeover Provisions—Restated Certificate of Incorporation and Restated Bylaws Provisions” for additional information.

Director Independence

The listing rules of the New York Stock Exchange generally require that a majority of the members of a listed company’s board of directors be independent within specified periods following the closing of an initial public offering. In addition, the listing rules generally require that, subject to specified exceptions, each member of a listed company’s audit, compensation, and nominating and governance committees be independent.

Our board of directors has determined that none of our non-employee directors has a material relationship with us and that each of these directors is “independent” as that term is defined under the rules of the New York Stock Exchange. In making this determination, our board of directors considered the relationships that each non-employee director has with us 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 described in the section titled “Certain Relationships and Related-Party Transactions.”

Lead Independent Director

Our board of directors has appointed Mr. Callaghan to serve as our lead independent director upon the completion of this offering. As lead independent director, Mr. Callaghan will preside over periodic meetings of our independent directors, serve as a liaison between the chairperson of our board of directors and the independent directors, and perform such additional duties as our board of directors may otherwise determine and delegate.

Committees of Our Board of Directors

Our board of directors has established an audit committee, a compensation committee, and a nominating and governance committee. The composition and responsibilities of each committee are described below. Members
serve on these committees until their resignations or until otherwise determined by our board of directors. Prior to the completion of this offering, our board of directors will adopt a charter for each of these committees. Following the completion of this offering, copies of the charters for each committee will be available without charge on the Investor Relations portion of our website.

Audit Committee

Our audit committee is comprised of Mr. Paisley, who is the chair of the audit committee, and Mr. Murray. Each member of our audit committee is independent under the current New York Stock Exchange and SEC rules and regulations and we intend to comply with the requirement to have a minimum of three members on our audit committee within the applicable transition period. Each member of our audit committee is financially literate as required by current New York Stock Exchange listing standards. In addition, our board of directors has determined that Mr. Paisley is an audit committee financial expert within the meaning of Item 407(d) of Regulation S-K promulgated under the Securities Act. Our audit committee will, among other things:

- select a qualified firm to serve as the independent registered public accounting firm to audit our financial statements;
- help to ensure the independence and performance of the independent registered public accounting firm;
- discuss the scope and results of the audit with the independent registered public accounting firm, and review, with management and the independent accountants, our interim and year-end operating results;
- review our policies on risk assessment and risk management;
- obtain and review a report by the independent registered public accounting firm at least annually, that describes our internal quality-control procedures, any material issues with such procedures, and any steps taken to deal with such issues;
- approve (or, as permitted, pre-approve) all audit and all permissible non-audit services to be performed by the independent registered public accounting firm; and
- review related-party transactions and proposed waivers.

Compensation Committee

Our compensation committee is comprised of Mr. Callaghan, who is the chair of the compensation committee, and Mr. Paisley. The composition of our compensation committee meets the requirements for independence under current New York Stock Exchange and SEC rules and regulations. Each member of this committee is also a non-employee director, as defined pursuant to Rule 16b-3 promulgated under the Exchange Act, and an outside director, as defined pursuant to Section 162(m) of the Internal Revenue Code of 1986, as amended, or the Code. The purpose of our compensation committee is to discharge the responsibilities of our board of directors relating to compensation of our executive officers. Our compensation committee will, among other things:

- determine and approve, or make recommendations to our board of directors regarding, the compensation of our executive officers;
- recommend to our board of directors the compensation of our non-employee directors;
- administer our stock and equity incentive plans;
- review and approve, or make recommendations to our board of directors regarding cash-based and equity-based incentive compensation plans; and
- review our overall compensation strategy.
Nominating and Governance Committee

The nominating and governance committee is comprised of Mr. Murray, who is the chair of the nominating and governance committee, and Mr. Callaghan. The composition of our nominating and governance committee meets the requirements for independence under current New York Stock Exchange and SEC rules and regulations. Our nominating and governance committee will, among other things:

• identify and recommend candidates for membership on our board of directors;
• oversee the process of evaluating the performance of our board of directors and each committee of the board of directors;
• consider and make recommendations to our board of directors regarding the composition of our board of directors and its committees;
• develop and make recommendations to our board of directors regarding corporate governance guidelines and policies; and
• advise our board of directors on corporate governance matters.

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation committee is or has been an officer or employee of our company. None of our executive officers has served as a member of the board of directors, or as a member of the compensation or similar committee, of any entity that has one or more executive officers who served on our board of directors or compensation committee during 2014.

In June 2013 through August 2013, we sold shares of our Series D convertible preferred stock to True Ventures II, L.P. and Foundry Venture Capital 2007, L.P. and Foundry Group Select Fund, L.P., or together, the Foundry Group Funds. Mr. Callaghan, a member of our compensation committee, is a founder and a managing partner of True Ventures. Brad Feld, a member of our board of directors and our compensation committee to May 2015, is a founder and managing director of Foundry Group. See the section titled “Certain Relationships and Related-Party Transactions—Series D Convertible Preferred Stock Financing” for additional information.

Codes of Conduct and Ethics

Our board of directors has adopted codes of conduct and ethics that apply to all of our employees, officers, and directors. The full text of our codes of conduct and ethics will be posted on the Investor Relations section of our website. We intend to disclose future amendments to certain provisions of our codes of conduct and ethics, or waivers of these provisions, on our website or in filings under the Exchange Act.

Director Compensation

In 2014, we did not pay any fees to, make any equity awards or non-equity awards to, or pay any other compensation to any of the non-employee members of our board of directors. All compensation that we paid to Messrs. Park and Friedman, our only employee directors, is set forth in the table below in the section titled “Executive Compensation—Summary Compensation Table.” No compensation was paid to our employee directors in their capacities as directors in 2014. As of December 31, 2014, none of our directors held outstanding stock options or other equity awards.

In February 2015, we granted Mr. Paisley an option to purchase 40,000 shares of our Class B common stock as compensation for Mr. Paisley’s service as a member of our board of directors as described below in the section titled “—Non-Employee Director Equity Compensation.” This stock option vests in equal monthly installments over two years. In the event of a change of control, all of the unvested shares subject to this option will become immediately vested and exercisable as of the date immediately prior to the change of control.
In January 2015, our board of directors approved the following cash and equity compensation for our non-employee directors:

**Non-Employee Director Equity Compensation**

**Initial Equity Grant.** Each non-employee director appointed to our board of directors on or following January 2015 and prior to the completion of this offering will be granted an option to purchase 40,000 shares of our Class B common stock, with each such option vesting in equal monthly installments over two years. In the event of a change of control, all of the unvested shares subject to each such option will become immediately vested and exercisable as of the date immediately prior to the change of control.

Following the completion of this offering, instead of receiving a stock option grant as described above, each non-employee director appointed to our board of directors will be automatically granted an initial grant of RSUs on the date of his or her appointment having an aggregate fair market value of $150,000 (with such amount pro-rated based on the number of days between the date of such director’s appointment and the date of our first annual meeting of stockholders following the date of grant (or to the extent that we have not determined the date of the next annual meeting of stockholders on or before the date of grant, May 15 following the date of grant)). The RSUs will fully vest on the date of our first annual meeting of stockholders following the date of grant or immediately prior to the consummation of a change of control event. If an individual is appointed as a non-employee director at an annual meeting of stockholders, he or she will be granted an annual equity grant, as described below, in lieu of the initial equity grant.

**Annual Equity Grant.** On the date of each annual meeting of stockholders following the completion of this offering (commencing with our 2016 annual meeting of stockholders), each non-employee director who is serving on our board of directors on the date of such annual meeting will be automatically granted RSUs having an aggregate fair market value of $150,000. The RSUs will fully vest on the earlier of (i) the date of the following year’s annual meeting of stockholders (but only for a non-employee director who does not stand for re-election at, or is not re-elected at, the following year’s annual meeting of stockholders but who otherwise serves on the board of directors until the date of such meeting) and (ii) the date that is one year following the date of grant.

**Non-Employee Director Cash Compensation**

Following the completion of this offering, each non-employee director will also be entitled to receive an annual cash retainer of $40,000 for service on the board of directors and additional annual cash compensation for committee membership as follows:

- Audit committee member: $10,000
- Audit committee chair: $20,000
- Compensation committee member: $7,500
- Compensation committee chair: $15,000
- Nominating and governance committee member: $5,000
- Nominating and governance committee chair: $10,000
EXECUTIVE COMPENSATION

Summary Compensation Table

The following table provides information regarding all compensation awarded to, earned by or paid to our President and Chief Executive Officer and our two most highly compensated executive officers (other than our President and Chief Executive Officer) for 2014.

<table>
<thead>
<tr>
<th>Name and Principal Position</th>
<th>Year</th>
<th>Salary ($)</th>
<th>Bonus ($)</th>
<th>Options Awards ($)</th>
<th>All Other Compensation ($)</th>
<th>Total ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>James Park, President and Chief Executive Officer</td>
<td>2014</td>
<td>$222,179 (4)</td>
<td>$80,000</td>
<td>$7,532,909</td>
<td>$9,537</td>
<td>$7,844,625</td>
</tr>
<tr>
<td>Eric N. Friedman, Chief Technology Officer</td>
<td>2014</td>
<td>222,179 (4)</td>
<td>80,000</td>
<td>7,532,909</td>
<td>12,707</td>
<td>7,847,795</td>
</tr>
<tr>
<td>William Zerella, Chief Financial Officer</td>
<td>2014</td>
<td>169,423 (4)</td>
<td>40,833</td>
<td>4,774,211</td>
<td>6,622</td>
<td>4,991,089</td>
</tr>
</tbody>
</table>

(1) The amounts reported in this column represent bonuses awarded at the discretion of our board of directors.
(2) The amounts reported in this column represent the aggregate grant date fair value of the stock options granted to the named executive officers during 2014 as computed in accordance with FASB Accounting Standards Codification Topic 718. The assumptions used in calculating the grant date fair value of the stock options reported in this column are set forth in note 12 of the notes to our consolidated financial statements included in this prospectus.
(3) The amounts reported in this column represent life insurance and health insurance premiums paid by us on behalf of our named executive officers. We also pay such premiums on behalf of all of our employees.
(4) As of December 31, 2014, Mr. Park and Mr. Friedman had a base salary of $250,000, and Mr. Zerella had a base salary of $300,000 (prorated for 2014 to his start date).

Offer Letters and Employment Arrangements

We currently do not have employment agreements or offer letters with any of our named executive officers other than Mr. Zerella. All of our named executive officers are employed on an at-will basis, with no fixed term of employment.

James Park

As a founder, Mr. Park, our President and Chief Executive Officer, did not enter into an offer letter or any other formal arrangement or understanding with us regarding his employment. We currently have no employment agreement with Mr. Park. Mr. Park is an at-will employee.

Eric N. Friedman

As a founder, Mr. Friedman, our Chief Technology Officer, did not enter into an offer letter or any other formal arrangement or understanding with us regarding his employment. We currently have no employment agreement with Mr. Friedman. Mr. Friedman is an at-will employee.

William Zerella

Mr. Zerella is party to an offer letter with us dated April 24, 2014 pursuant to which he agreed to serve as our Chief Financial Officer. He is eligible to receive an annual bonus of up to $70,000 (prorated for 2014 to his start date). Pursuant to the offer letter, Mr. Zerella also received an option to purchase 1,441,354 shares of our Class B common stock. The offer letter also provides that if Mr. Zerella’s employment is terminated by us without cause during the first 12 months following his start date, he will be entitled to continued payment of his then-current monthly base salary, plus payment by us of COBRA premiums for him and eligible dependents, for a period of six months following the date of termination of employment.
Potential Payments upon Termination, Change of Control, or IPO

In connection with an involuntary termination (as defined in their respective stock option agreements) of employment upon or within 12 months following a change of control (as defined in their respective stock option agreements) or this offering, Messrs. Park and Friedman will receive accelerated vesting with respect to 50% of the total number of unvested shares subject to the stock option awards granted to each in August 2014 as of the date of such involuntary termination. Mr. Zerella will receive accelerated vesting with respect to 100% of the total number of unvested shares subject to the option award granted in June 2014 if, in connection with a change of control or within 12 months following such change of control, he is (i) terminated without cause (as defined in his stock option agreement) or (ii) there is a constructive termination event (as defined in his stock option agreement) and he terminates his employment within six months following such constructive termination event. In addition, under the terms and conditions of Mr. Zerella’s offer letter, as described above, Mr. Zerella is entitled to receive certain severance benefits upon certain terminations of employment. See the section titled “—2014 Outstanding Equity Awards at Year-End Table” for additional information.

2014 Outstanding Equity Awards at Year-End Table

<table>
<thead>
<tr>
<th>Name</th>
<th>Grant Date</th>
<th>Option Awards (1)</th>
<th>Exercise Price ($)</th>
<th>Option Expiration Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>James Park</td>
<td>9/27/2011(2), 8/7/2014(4)</td>
<td>1,113,222</td>
<td>256,898(3)</td>
<td>$0.08</td>
</tr>
<tr>
<td>Eric N. Friedman</td>
<td>9/27/2011(2), 8/7/2014(4)</td>
<td>1,113,222</td>
<td>256,898</td>
<td>0.08</td>
</tr>
<tr>
<td>William Zerella</td>
<td>6/10/2014(5)</td>
<td>—</td>
<td>1,441,354</td>
<td>3.44</td>
</tr>
</tbody>
</table>

(1) All of the outstanding equity awards described in this table were granted under our 2007 Plan.
(2) 1/4th of the total number of shares subject to the option vested on September 27, 2012 and the remaining shares subject to the option vest at a rate of 1/48th of the total number of shares subject to the option on each month thereafter, subject to continued service to us through each vesting date.
(3) In August 2014, our board of directors approved a modification to this stock option to provide that, in the event Mr. Park is terminated prior to the closing of this offering, the post-termination exercise period of the stock option will be extended until the earlier of (i) the six-year anniversary of Mr. Park’s termination or (ii) the applicable ten-year expiration date of the stock option, provided however, that the extended exercise period will terminate on the one-year anniversary of this offering or the closing of a liquidation event of the company. The stock-based compensation expense related to this modification is immaterial.
(4) 1/48th of the total number of shares subject to the option vest on May 1, 2015 and the remaining shares subject to the option vest at a rate of 1/48th of the total number of shares subject to the option on each month thereafter, subject to continued service to us through each vesting date. In connection with an involuntary termination of employment upon or within 12 months following a change of control or this offering, 50% of the total number of unvested shares subject to the option will become immediately vested and exercisable.
(5) 1/48th of the total number of shares subject to the option vest on June 9, 2015 and the remaining shares subject to the option vest at a rate of 1/48th of the total number of shares subject to the option on each month thereafter, subject to continued service to us through each vesting date. In connection with a constructive termination event and Mr. Zereilla terminates employment with us within six months following such constructive termination event, 100% of the total number of unvested shares subject to the option will become immediately vested and exercisable, upon the date of such termination or constructive termination.

Employee Benefit Plans

Amended and Restated 2007 Stock Plan

Our board of directors originally adopted our 2007 Plan in September 2007, which was subsequently approved by our stockholders in October 2007. Our 2007 Plan was most recently amended in March 2015.

The 2007 Plan provides for the grant of both incentive stock options, which qualify for favorable tax treatment to their recipients under Section 422 of the Code, and non-statutory stock options, as well as for the
issuance of RSUs and shares of restricted stock. We may grant incentive stock options only to our employees. We may grant non-statutory stock options and RSUs, as well as issue shares of restricted stock to our employees, directors, and consultants.

The exercise price of each incentive stock option must be at least equal to the fair market value of our common stock on the date of grant. However, the exercise price of incentive stock options granted to 10% stockholders must be at least equal to 110% of the fair market value of our common stock on the date of grant. The maximum permitted term of options granted under our 2007 Plan is ten years. However, the maximum permitted term of options granted to 10% stockholders is five years.

RSUs are awards representing the right to receive shares of our Class B common stock at a specified date in the future, subject to forfeiture of that right because of a termination of employment or service or failure to achieve certain performance conditions.

In the event we are a party to a merger or consolidation, the 2007 Plan provides that our board of directors, in its discretion, may take one or more of the following actions: (i) provide for the acceleration of any time period relating to the exercise or realization of an award, (ii) provide for the purchase of an award upon the participant’s request for an amount of cash or other property that could have been received upon the exercise or realization of an award immediately prior to the consummation of the merger or consolidation, had the award been currently exercisable or payable, (iii) adjust the terms of the award in a manner determined by the board of directors, (iv) cause the award to be assumed, or new rights substituted therefor, by another entity, or (v) make such other provision as the board of directors may consider equitable and in the best interests of the company.

As of March 31, 2015, we had reserved 40,594,287 shares of our Class B common stock for issuance under our 2007 Plan. As of March 31, 2015, options to purchase 31,619,974 of these shares remained outstanding, 194,423 of these shares subject to the settlement of RSUs remained outstanding, and 5,897,398 shares remained available for future grant. The stock options outstanding as of March 31, 2015, had a weighted-average exercise price of $3.29 per share. Our 2015 Plan will be effective upon the date immediately prior to the date of this prospectus. As a result, we will not grant any additional stock options under the 2007 Plan following that date, and the 2007 Plan will terminate at that time. However, any outstanding stock options and RSUs granted under the 2007 Plan will remain outstanding, subject to the terms of our 2007 Plan and applicable award agreements, until such shares are issued under those awards (by exercise of stock options or settlement of RSUs) or until the awards terminate or expire by their terms. Stock options and RSUs granted under the 2007 Plan generally have terms similar to those described below with respect to stock options and RSUs granted under our 2015 Plan.

2015 Equity Incentive Plan

In May 2015, our board of directors and our stockholders intend to adopt and approve our 2015 Plan. The 2015 Plan will become effective on the date immediately prior to the date of this prospectus and will serve as the successor to our 2007 Plan. Any remaining shares available for issuance under our 2007 Plan will become reserved for issuance under our 2015 Plan, and we will cease granting awards under the 2007 Plan. The number of shares reserved for issuance under our 2015 Plan will increase automatically on the first day of January of each of 2016 through 2025 by the number of shares of Class A common stock equal to 5% of the total outstanding shares of our common stock as of the immediately preceding December 31. However, our board of directors may reduce the amount of the increase in any particular year. In addition, the following shares of our Class A common stock will be available for grant and issuance under our 2015 Plan:

- shares subject to awards granted under our 2015 Plan that cease to be subject to the awards for any reason other than exercises of stock options or stock appreciation rights;
- shares issued or subject to awards granted under our 2015 Plan that are subsequently forfeited or repurchased by us at the original issue price;
- shares surrendered, cancelled, or exchanged for cash or a different award (or combination thereof); and
Our 2015 Plan authorizes the award of stock options, restricted stock awards, stock appreciation rights, RSUs, performance awards, and stock bonuses. No person will be eligible to receive more than 2,000,000 shares in any calendar year under our 2015 Plan other than a new employee of ours, who will be eligible to receive no more than 4,000,000 shares under the plan in the calendar year in which the employee commences employment. The aggregate number of shares that may be subject to awards granted to any one non-employee director pursuant to the 2015 Plan in any calendar year shall not exceed 1,000,000. No more than 25,000,000 shares may be issued as incentive stock options under the 2015 Plan.

Our 2015 Plan will be administered by our compensation committee, all of the members of which are outside directors as defined under applicable federal tax laws, or by our board of directors acting in place of our compensation committee. The compensation committee will have the authority to construe and interpret our 2015 Plan, grant awards, and make all other determinations necessary or advisable for the administration of the plan.

Our 2015 Plan will provide for the grant of awards to our employees, directors, consultants, independent contractors, and advisors, provided the consultants, independent contractors, directors, and advisors render services not in connection with the offer and sale of securities in a capital-raising transaction. The exercise price of stock options must be at least equal to the fair market value of our Class A common stock on the date of grant.

We anticipate that in general, stock options will vest over a four-year period. Stock options may vest based on time or achievement of performance conditions. Our compensation committee may provide for stock options to be exercised only as they vest or to be immediately exercisable with any shares issued on exercise being subject to our right of repurchase that lapses as the shares vest. The maximum term of stock options granted under our 2015 Plan is ten years.

A restricted stock award is an offer by us to sell shares of our Class A common stock subject to restrictions, which may vest based on time or achievement of performance conditions. The price, if any, of a restricted stock award will be determined by the compensation committee. Unless otherwise determined by the compensation committee at the time of award, vesting will cease on the date the holder no longer provides services to us and unvested shares will be forfeited to or repurchased by us.

Stock appreciation rights provide for a payment, or payments, in cash or shares of our Class A common stock, to the holder based upon the difference between the fair market value of our Class A common stock on the date of exercise and the stated exercise price at grant up to a maximum amount of cash or number of shares. Stock appreciation rights may vest based on time or achievement of performance conditions.

RSUs represent the right to receive shares of our Class A common stock at a specified date in the future, subject to forfeiture of that right because of termination of employment or failure to achieve certain performance conditions. If an RSU has not been forfeited, then on the date specified in the RSU agreement, we will deliver to the holder of the RSU whole shares of our Class A common stock (which may be subject to additional restrictions), cash, or a combination of our Class A common stock and cash.

Performance awards cover a number of shares of our Class A common stock that may be settled upon achievement of the pre-established performance conditions in cash or by issuance of the underlying shares. These awards are subject to forfeiture prior to settlement due to termination of employment or failure to achieve the performance conditions.

Stock bonuses may be granted as additional compensation for past services or performance, in the form of cash, Class A common stock, or a combination thereof, and may be subject to restrictions, which may vest based on time or achievement of performance conditions.
In the event there is a specified type of change in our capital structure without our receipt of consideration, such as a stock split, appropriate adjustments will be made to the number of shares reserved under our 2015 Plan, the maximum number of shares that can be granted in a calendar year and the number of shares and exercise price, if applicable, of all outstanding awards under our 2015 Plan.

Awards granted under our 2015 Plan may not be transferred in any manner other than by will or by the laws of descent and distribution or as determined by our compensation committee. Unless otherwise permitted by our compensation committee, stock options may be exercised during the lifetime of the optionee only by the optionee or the optionee’s guardian or legal representative. Stock options granted under our 2015 Plan generally may be exercised for a period of three months after the termination of the optionee’s service to us, for a period of 12 months in the case of death or for a period of six months in the case of disability, or such longer period as our compensation committee may provide. Stock options generally terminate immediately upon termination of employment for cause.

Our 2015 Plan provides that, in the event of a sale, lease, or other disposition of all or substantially all of our assets or specified types of mergers or consolidations, or a corporate transaction, outstanding awards under our 2015 Plan may be assumed or replaced by any surviving or acquiring corporation; the surviving or acquiring corporation may substitute similar awards for those outstanding under our 2015 Plan; outstanding awards may be settled for the full value of such outstanding award (whether or not then vested or exercisable) in cash, cash equivalents, or securities of the successor entity with payment deferred until the date or dates the award would have become exercisable or vested; or outstanding awards may be terminated for no consideration. Our board of directors has the discretion to provide that a stock award under our 2015 Plan will immediately vest as to all or any portion of the shares subject to the stock award at the time of a corporate transaction or in the event a participant’s service with us or a successor entity is terminated actually or constructively within a designated period following the occurrence of the transaction. Stock awards held by participants under our 2015 Plan will not vest automatically on such an accelerated basis unless specifically provided in the participant’s applicable award agreement. In the event of a corporate transaction, the vesting of all awards granted to non-employee directors shall accelerate and such awards shall become exercisable (as applicable) in full upon the consummation of the corporate transaction.

Our 2015 Plan will terminate ten years from the date our board of directors approves the plan, unless it is terminated earlier by our board of directors. Our board of directors may amend or terminate our 2015 Plan at any time. If our board of directors amends our 2015 Plan, it does not need to ask for stockholder approval of the amendment unless required by applicable law.

2015 Employee Stock Purchase Plan

In May 2015, our board of directors and our stockholders intend to adopt and approve our 2015 ESPP. The 2015 ESPP will become effective upon the completion of this offering. We have adopted the 2015 ESPP in order to enable eligible employees to purchase shares of our Class A common stock at a discount following the date of this offering. Purchases will be accomplished through participation in discrete offering periods. Our 2015 ESPP is intended to qualify as an employee stock purchase plan under Section 423 of the Code. We initially reserved 2,500,000 shares of our Class A common stock for issuance under our 2015 ESPP. The number of shares reserved for issuance under our 2015 ESPP will increase automatically on the 1st day of January of each calendar year following the first offering date by the number of shares equal to 1% of the total outstanding shares of our common stock as of the immediately preceding December 31 (rounded to the nearest whole share). However, our board of directors may reduce the amount of the increase in any particular year. The aggregate number of shares issued over the term of our 2015 ESPP will not exceed 25,000,000 shares of our Class A common stock.

Our compensation committee will administer our 2015 ESPP. Our employees generally are eligible to participate in our 2015 ESPP if they are employed by us for at least 20 hours per week and more than five months in a calendar year. Employees who are 5% stockholders, or would become 5% stockholders as a result of their participation in our 2015 ESPP, are ineligible to participate in our 2015 ESPP. We may impose additional
restrictions on eligibility. Under our 2015 ESPP, eligible employees will be able to acquire shares of our Class A common stock by accumulating funds through payroll deductions. Our eligible employees will be able to select a rate of payroll deduction between 1% and 15% of their base cash compensation. We will also have the right to amend or terminate our 2015 ESPP at any time. Our 2015 ESPP will terminate on the tenth anniversary of the last day of the first purchase period, unless it is terminated earlier by our board of directors.

When an initial offering period commences, our employees who meet the eligibility requirements for participation in that offering period will automatically be granted a nontransferable option to purchase shares in that offering period. For subsequent offering periods, new participants will be required to enroll in a timely manner. Once an employee is enrolled, participation will be automatic in subsequent offering periods. An employee’s participation automatically ends upon termination of employment for any reason.

Except for the first offering period, each offering period will run for no more than six months, with purchases occurring every six months. The first offering period will begin upon the date of this prospectus and will end approximately six months following the date of this prospectus. An employee’s participation automatically ends upon termination of employment for any reason.

No participant will have the right to purchase shares of our Class A common stock in an amount, when aggregated with purchase rights under all our employee stock purchase plans that are also in effect in the same calendar year, that have a fair market value of more than $25,000, determined as of the first day of the applicable purchase period, for each calendar year in which that right is outstanding. In addition, no participant will be permitted to purchase more than 2,500 shares of our Class A common stock during any one purchase period or a lesser amount determined by our compensation committee. The purchase price for shares of our Class A common stock purchased under our 2015 ESPP will be 85% of the lesser of the fair market value of our Class A common stock on (i) the first trading day of the applicable offering period and (ii) the last trading day of each purchase period in the applicable offering period.

If we experience a change in control transaction, any offering period that commenced prior to the closing of the proposed change in control transaction will be shortened and terminated on a new purchase date. The new purchase date will occur prior to the closing of the proposed change in control transaction, and our 2015 ESPP will then terminate on the closing of the proposed change in control.

401(k) Plan
We maintain a retirement plan for the benefit of our employees. The plan is intended to qualify as a tax-qualified 401(k) plan so that contributions to the 401(k) plan, and income earned on such contributions, are not taxable to participants until withdrawn or distributed from the 401(k) plan (except in the case of contributions under the 401(k) plan designated as Roth contributions). The 401(k) plan provides that each participant may contribute up to 90% of his or her pre-tax compensation, up to an annual statutory limit. Participants who are at least 50 years old can also contribute additional amounts based on statutory limits for “catch-up” contributions. Under the 401(k) plan, each employee is fully vested in his or her deferred salary contributions. Employee contributions are held and invested by the plan’s trustee as directed by participants. Our 401(k) plan provides for discretionary matching of employee contributions.

Limitation of Liability and Indemnification of Directors and Officers
Our restated certificate of incorporation, which will become effective immediately prior to the completion of this offering, contains 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 for liability:

• for any breach of their duty of loyalty to our company or our stockholders;
for 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

for 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.

Our restated bylaws, which will become effective immediately prior to the completion of this offering, 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 restated bylaws 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 restated bylaws 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 very limited exceptions.

We have also entered into indemnification agreements with each of our directors and executive officers that are 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 in our restated certificate of incorporation and restated bylaws or in these indemnification agreements may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty. They may also reduce the likelihood of derivative litigation against our directors and 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 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 officers against loss arising from claims made by reason of breach of fiduciary duty or other wrongful acts as a director or officer, including claims relating to public securities matters, and to us with respect to payments that may be made by us to these officers and directors 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 or indemnified against certain liabilities incurred in their capacity as members of our board of directors.

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The underwriting agreement will provide for indemnification by the underwriters of us and our officers, directors, and employees 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.
CERTAIN RELATIONSHIPS AND RELATED-PARTY TRANSACTIONS

In addition to the compensation arrangements discussed in the sections titled “Management” and “Executive Compensation,” the following is a description of each transaction since January 1, 2012 and each currently proposed transaction in which:

• we have been or are to be a participant;
• the amount involved exceeds or will exceed $120,000; and
• any of our directors, executive officers, or holders of more than 5% of our capital stock, or any immediate family member of or person sharing the household with any of these individuals, had or will have a direct or indirect material interest.

Series D Convertible Preferred Stock Financing

Between June 2013 and August 2013, we sold an aggregate of 19,433,258 shares of our Series D convertible preferred stock at a purchase price of $2.2127 per share for an aggregate purchase price of approximately $43.0 million. Each share of our Series D convertible preferred stock will convert automatically into one share of our Class B common stock immediately prior to the completion of this offering.

The following table summarizes the Series D convertible preferred stock purchased by members of our board of directors or their affiliates and holders of more than 5% of our outstanding capital stock:

<table>
<thead>
<tr>
<th>Name of Stockholder</th>
<th>Shares of Series D Convertible Preferred Stock</th>
<th>Total Purchase Price ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SoftBank PrinceVille Investments, L.P. (1)</td>
<td>6,779,048</td>
<td>15,000,000</td>
</tr>
<tr>
<td>True Ventures II, L.P. (2)</td>
<td>451,936</td>
<td>999,999</td>
</tr>
<tr>
<td>Foundry Group Select Fund, LP (3)</td>
<td>4,519,360</td>
<td>9,999,988</td>
</tr>
</tbody>
</table>

(1) SoftBank PrinceVille Investments, L.P. holds more than 5% of our outstanding capital stock. Steven Murray, a member of our board of directors, is a Partner of SoftBank Capital, an entity affiliated with SoftBank PrinceVille Investments, L.P.
(2) True Ventures II, L.P. holds more than 5% of our outstanding capital stock. Jonathan D. Callaghan, a member of our board of directors, is a Managing Partner of True Ventures, an entity affiliated with True Ventures II, L.P.
(3) Foundry Group Select Fund, L.P and Foundry Venture Capital 2007, L.P., together, hold more than 5% of our outstanding capital stock. Brad Feld, a member of our board of directors from August 2010 to May 2015, is a Managing Director of Foundry Group, an affiliate of the Foundry Group Funds.

Third Amended and Restated Investors’ Rights Agreement

We have entered into an amended and restated investors’ rights agreement with certain holders of our convertible preferred stock, including entities affiliated with the Foundry Group Funds, SoftBank PrinceVille Investments, L.P., and True Ventures II, L.P. Jonathan D. Callaghan and Steven Murray, members of our board of directors, are affiliated with True Ventures and SoftBank Capital, respectively. Brad Feld, who was a member of our board of directors from August 2010 to May 2015, is affiliated with the Foundry Group Funds. These stockholders are entitled to rights with respect to the registration of their shares following this offering. See the section titled “Description of Capital Stock—Registration Rights” for additional information.

Indemnification Agreements

We have entered into indemnification agreements with each of our directors and executive officers. The indemnification agreements and our restated bylaws, which will become effective immediately prior to the completion of this offering, will require us to indemnify our directors to the fullest extent not prohibited by Delaware law. Subject to certain limitations, our restated bylaws also require us to advance expenses incurred by our directors and officers. See the section titled “Executive Compensation—Limitation of Liability and Indemnification of Directors and Officers” for additional information.
In connection with a distribution agreement we entered into with SoftBank BB Corporation, or SoftBank BB, an entity affiliated with SoftBank PrinceVille Investments, L.P. that holds more than 5% of our outstanding capital stock, SoftBank BB paid us $17.6 million and $0.5 million in 2013 and 2014, respectively. In 2012, SoftBank BB paid us an immaterial amount in connection with the distribution agreement. In 2013, we paid SoftBank BB $0.1 million for promotional services rendered in Japan by SoftBank BB under the distribution agreement. In the three months ended March 31, 2015, we repaid SoftBank BB $2.8 million for sales returns accepted in 2014, and SoftBank BB paid us $0.5 million, due to an amendment of the distribution agreement. Steven Murray, a member of our board of directors, is a Partner of SoftBank Capital, an entity affiliated with SoftBank PrinceVille Investments, L.P.

Review, Approval, or Ratification of Transactions with Related Parties

Our related-person transactions policy adopted by our board of directors and the charter of our audit committee to be adopted by our board of directors and in effect immediately prior to the completion of this offering require that any transaction with a related person that must be reported under applicable rules of the SEC must be reviewed and approved or ratified by our audit committee, unless the related party is, or is associated with, a member of that committee, in which event the transaction must be reviewed and approved by our nominating and governance committee.

Prior to the adoption of our related-person transactions policy, we had no formal, written policy or procedure for the review and approval of related-party transactions. However, our practice has been to have all related-party transactions reviewed and approved by a majority of the disinterested members of our board of directors, including the transactions described above.
The following table presents certain information with respect to the beneficial ownership of our common stock, and as adjusted to reflect the sale of Class A common stock offered by us and the selling stockholders in this offering assuming no exercise of the underwriters’ option to purchase additional shares to cover over-allotments, by:

- each of our directors;
- each of our named executive officers;
- all of our directors and executive officers as a group;
- each stockholder known by us to be the beneficial owner of more than 5% of our outstanding shares of Class A or Class B common stock; and
- each selling stockholder.

We have determined beneficial ownership in accordance with the rules of the SEC. Unless otherwise indicated below, to our knowledge, based on information furnished to us, the persons and entities named in the table have sole voting and investment power with respect to all shares that they beneficially own, subject to applicable community property laws. We have deemed shares of our common stock subject to options that are currently exercisable or exercisable within 60 days of March 31, 2015 to be outstanding and to be beneficially owned by the person holding the option for the purpose of computing the percentage ownership of that person but have not treated them as outstanding for the purpose of computing the percentage ownership of any other person.

We have based percentage ownership of our common stock before this offering on no shares of our Class A common stock and 121,508,763 shares of our Class B common stock outstanding on March 31, 2015, which includes 93,234,322 shares of Class B common stock resulting from the automatic conversion of all outstanding shares of our convertible preferred stock in connection with this offering, as if this conversion had occurred as of March 31, 2015. Percentage ownership of our common stock after this offering also assumes the sale by us and the selling stockholders of shares of Class A common stock in this offering. Unless otherwise indicated, the address of each beneficial owner in the table below is c/o Fitbit, Inc., 405 Howard Street, San Francisco, California 94105.

<table>
<thead>
<tr>
<th>Name of Beneficial Owner</th>
<th>Shares Beneficially Owned Before this Offering</th>
<th>% Total Voting Power Before this Offering (1)</th>
<th>Number of Shares Being Offered</th>
<th>Shares Beneficially Owned After this Offering</th>
<th>% Total Voting Power After this Offering (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Shares</td>
<td>%</td>
<td></td>
<td>Shares</td>
<td>%</td>
</tr>
<tr>
<td><strong>Named Executive Officers and Directors:</strong></td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>James Park (2)</td>
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<td>10.9</td>
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<td>Eric N. Friedman (3)</td>
<td>13,345,913</td>
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<tr>
<td>William Zerella</td>
<td>—</td>
<td>—</td>
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<tr>
<td>Jonathan D. Callaghan (4)</td>
<td>27,243,528</td>
<td>22.4</td>
<td>22.4</td>
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<tr>
<td>Steven Murray (5)</td>
<td>6,779,048</td>
<td>5.6</td>
<td>5.6</td>
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<tr>
<td>Christopher Paisley (6)</td>
<td>6,666</td>
<td>—</td>
<td>—</td>
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<tr>
<td>All executive officers and directors as a group (10 persons) (7)</td>
<td>67,609,637</td>
<td>52.7</td>
<td>52.7</td>
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<tr>
<td><strong>5% Stockholders:</strong></td>
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<tr>
<td>Foundry Group Funds (8)</td>
<td>35,151,768</td>
<td>28.9</td>
<td>28.9</td>
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<td></td>
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<tr>
<td>True Ventures II, L.P. (9)</td>
<td>27,243,528</td>
<td>22.4</td>
<td>22.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SoftBank PrinceVille Investments, L.P. (10)</td>
<td>6,779,048</td>
<td>5.6</td>
<td>5.6</td>
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<tr>
<td><strong>Other Selling Stockholders:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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* Less than 1 percent

(1) Percentage of total voting power represents voting power with respect to all shares of our Class A and Class B common stock, as a single class. The holders of our Class B common stock are entitled to ten votes per share, and holders of our Class A common stock are entitled to one vote per share. See the section titled “Description of Capital Stock—Common Stock” for additional information about the voting rights of our Class A and Class B common stock.

(2) Consists of (i) 12,044,928 shares of Class B common stock held by Mr. Park and (ii) 1,300,985 shares of Class B common stock subject to options held by Mr. Park that are exercisable within 60 days of March 31, 2015.

(3) Consists of (i) 9,644,928 shares of Class B common stock held by Mr. Friedman, (ii) 2,400,000 shares of Class B common stock held by Mr. Friedman as trustee of the Friedman 2015 GRAT, and (iii) 1,300,985 shares of Class B common stock subject to options held by Mr. Friedman that are exercisable within 60 days of March 31, 2015.

(4) Consists of the shares of Class B common stock referred to in footnote (9) below.

(5) Consists of the shares of Class B common stock referred to in footnote (10) below.

(6) Consists of 6,666 shares of Class B common stock subject to options held by Mr. Paisley that are exercisable within 60 days of March 31, 2015.

(7) Consists of (i) 60,919,412 shares of Class B common stock and (ii) 6,690,225 shares of Class B common stock subject to options that are exercisable within 60 days of March 31, 2015 held by all our executive officers and directors, as a group.

(8) Consists of (i) 30,032,408 shares of Class B common stock held by Foundry Venture Capital 2007, L.P., and (ii) 4,519,360 of Class B common stock held by Foundry Group Select Fund, L.P. Foundry Venture 2007, LLC is the general partner of Foundry Venture Capital 2007, L.P. and Foundry Select Fund GP, LLC is the general partner of Foundry Group Select Fund, L.P. Seth Levine, Ryan McIntyre, Jason Mendelson, and Brad Feld, a member of our board of directors from August 2010 to May 2015, are the managing members of Foundry Group, an affiliate of the Foundry Group Funds and, therefore, may be deemed to share voting and dispositive power over the shares held by the Foundry Group Funds. The address for these entities is 1050 Walnut Street, Suite 210, Boulder, Colorado 80302.

(9) Consists of 27,243,528 shares held of record by True Ventures II, L.P., or TV II, a Delaware limited partnership, for itself and as nominee for True Ventures II-A, L.P., or TV II-A, a Delaware limited partnership. True Venture Partners II, L.L.C., or TVP II, a Delaware limited liability company, is the general partner of each of TV II and TV II-A. Jonathan D. Callaghan and Philip Black are the managing members of TVP II and, therefore, may be deemed to share voting and dispositive power over the shares held by TV II and TV II-A. The address for these entities is 530 Lytton Avenue, Suite 303, Palo Alto, California 94301.

(10) Consists of 6,779,048 shares of Class B common stock held by SoftBank PrinceVille Investments, L.P. SB PV GP L.P. is the general partner of SoftBank PrinceVille Investments, L.P. and SB PV GP LLC is the general partner of SB PV GP L.P. The managing members of SB PV GP LLC are Ronald D. Fisher, Kabir Misra, and Steven Murray, and, therefore, may be deemed to share voting and dispositive power over the shares held by SoftBank PrinceVille Investments, L.P. The address for these entities is 38 Glen Avenue, Newton, Massachusetts 02459.
DESCRIPTION OF CAPITAL STOCK

The following description summarizes the most important terms of our capital stock, as they will be in effect following this offering. Because it is only a summary, it does not contain all the information that may be important to you. We expect to adopt a restated certificate of incorporation and restated bylaws that will become effective immediately prior to the completion of this offering, and this description summarizes provisions that are expected to be included in these documents. For a complete description, you should refer to our restated certificate of incorporation, restated bylaws, and third 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. Upon the completion of this offering, our authorized capital stock will consist of

- 500,000,000 shares of Class A common stock, $0.0001 par value per share,
- 1,000,000,000 shares of Class B common stock, $0.0001 par value per share,
- 5,000,000 shares of “blank check” preferred stock, $0.0001 par value per share.

Assuming the conversion of all outstanding shares of our convertible preferred stock into shares of our Class B common stock, which will occur immediately prior to the completion of this offering, as of March 31, 2015, there were outstanding:

- no shares of our Class A common stock;
- 121,508,763 shares of our Class B common stock outstanding, held by 130 stockholders of record;
- 31,619,974 shares of our Class B common stock issuable upon exercise of outstanding stock options;
- 194,423 shares of our Class B common stock issuable upon the settlement of outstanding RSUs; and
- 1,303,328 shares of our Class B common stock issuable upon exercise of outstanding warrants.

Common Stock

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.

Voting Rights

Holders of our Class A common stock are entitled to one vote for each share of Class A common stock held on all matters submitted to a vote of stockholders and holders of our Class B common stock are entitled to ten votes for each share of Class B common stock held on all matters submitted to a vote of stockholders. Holders of shares of our Class A common stock and Class B common stock vote together as a single class on all matters (including the election of directors) submitted to a vote of stockholders, unless otherwise required by law. Our restated certificate of incorporation does not provide for cumulative voting for the election of directors. As a result, the holders of a majority of our voting shares can elect all of the directors then standing for election.

Our restated certificate of incorporation and our restated bylaws that will become effective immediately prior to the completion of this offering establish a classified board of directors, to be divided into three classes with staggered three-year terms. Only one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms.

No Preemptive or Similar Rights

Our common stock is not entitled to preemptive rights, and is not subject to redemption or sinking fund provisions.
Upon our liquidation, dissolution, or winding-up, the assets legally available for distribution to our stockholders would be distributable ratably among the holders of our Class A and Class B 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 on, if any, any outstanding shares of preferred stock.

Each outstanding share of Class B common stock is convertible at any time at the option of the holder into one share of Class A common stock. In addition, each share of Class B common stock will convert automatically into one share of Class A common stock upon any transfer, whether or not for value, which occurs after the closing of this offering, except for certain permitted transfers described in our restated certificate of incorporation, including transfers to family members, trusts solely for the benefit of the stockholder or their family members, and partnerships, corporations, and other entities exclusively owned by the stockholder or their family members. Once converted or transferred and converted into Class A common stock, the Class B common stock will not be reissued.

All the outstanding shares of Class A and Class B common stock will convert automatically into shares of a single class of common stock on the earlier of or the date that holders of a majority of our Class B common stock elect to convert the Class B common stock to Class A common stock. Following such conversion, each share of common stock will have one vote per share and the rights of the holders of all outstanding common stock will be identical. Once converted into a single class of common stock, the Class A and Class B common stock may not be reissued.

All of the outstanding shares of our Class A and Class B common stock are, and the shares of our common stock to be issued pursuant to this offering will be, fully paid and non-assessable.

Following the completion of this offering, our board of directors will be 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 Class A or Class B 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 our control and might adversely affect the market price of our Class A common stock and the voting and other rights of the holders of our Class A and Class B common stock. We have no current plan to issue any shares of preferred stock.

As of March 31, 2015, we had outstanding options to purchase an aggregate of 31,619,974 shares of our Class B common stock, with a weighted-average exercise price of $3.29 per share, granted pursuant to our 2007 Plan.
RSUs

As of March 31, 2015, we had outstanding RSUs that may be settled for an aggregate of 194,423 shares of our Class B common stock granted pursuant to our 2007 Plan.

Warrants

As of March 31, 2015, we had outstanding the following warrants to purchase shares of our capital stock:

<table>
<thead>
<tr>
<th>Type of Capital Stock</th>
<th>Total Number of Shares Subject to Warrants</th>
<th>Exercise Price</th>
<th>Expiration Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Series B convertible preferred stock</td>
<td>185,328</td>
<td>$0.3237</td>
<td>6/10/2018</td>
</tr>
<tr>
<td>Series C convertible preferred stock</td>
<td>38,000</td>
<td>0.5018</td>
<td>4/11/2019</td>
</tr>
<tr>
<td>Series C convertible preferred stock</td>
<td>1,080,000</td>
<td>1.00</td>
<td>9/27/2019</td>
</tr>
</tbody>
</table>

In connection with this offering, the warrants to purchase shares of our Series B and Series C convertible preferred stock will convert automatically into warrants to purchase a like number of shares of our Class B common stock. The exercise prices of these warrants may be paid either in cash or by surrendering the right to receive shares of our common stock having a value equal to the exercise price.

Registration Rights

Pursuant to the terms of our third amended and restated investors’ rights agreement, immediately following this offering, the holders of shares of our Class B common stock will be entitled to rights with respect to the registration of these shares under the Securities Act as described below.

Demand Registration Rights

At any time after six months from the date of this offering, the holders of at least 51% of the then-outstanding shares having registration rights can request that we file a registration statement covering registrable securities. If the holders requesting registration intend to distribute their shares by means of an underwriting, the underwriters of such offering will have the right to limit the number of shares to be underwritten for reasons related to the marketing of the shares. We are only required to file two registration statements that are declared effective upon exercise of these demand registration rights. We may postpone the filing of a registration statement for up to 120 days once in a 12-month period if our board of directors determines that the filing would be seriously detrimental to us and our stockholders, and we are not required to effect the filing of a registration statement during the period beginning 60 days prior to our good faith estimate of the date of the filing of, and ending on a date 180 days following the effective date of, a registration initiated by us.

Piggyback Registration Rights

If we register any of our securities for public sale, holders of shares having registration rights will have the right to include their shares in the registration statement. However, this right does not apply to a registration relating to sales of shares of participants in one of our stock plans, a registration relating to a corporate reorganization or other transaction under Rule 145 of the Securities Act, 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 having registration rights, or a registration in which the only shares being registered are shares issuable upon conversion of debt securities that are also being registered. The underwriters of any underwritten offering will have the right, in their sole discretion, to limit, because of marketing reasons, the number of shares registered by these holders, in which case the number of shares to be registered will be apportioned pro rata among these holders according to the total amount of securities entitled to be included by each holder, or in a manner mutually agreed upon by the holders.
Form S-3 Registration Rights

The holders of at least 10% of the then-outstanding shares having registration rights can request that we register all or part of their shares on Form S-3 if we are eligible to file a registration statement on Form S-3 and if the aggregate price to the public, net of underwriters’ discounts and commissions, of the shares offered is at least $5 million. The stockholders may only require us to effect two registration statements on Form S-3 in a 12-month period. We may postpone the filing of a registration statement on Form S-3 for up to 120 days once in a 12-month period if our board of directors determines that the filing would be seriously detrimental to us and our stockholders.

Expenses of Registration Rights

We generally will pay all expenses, other than underwriting discounts and commissions and the reasonable fees and disbursements of more than one counsel for the selling stockholders, incurred in connection with the registrations described above.

Expiration of Registration Rights

The registration rights described above will expire, with respect to any particular holder of these rights, on the earlier of the fifth anniversary of the completion of this offering or when that holder holds 1% or less of our then-outstanding common stock and can sell all of its registrable securities without restriction under Rule 144 of the Securities Act.

Anti-Takeover Provisions

The provisions of Delaware law, our restated certificate of incorporation, and our restated bylaws may have the effect of delaying, deferring, or discouraging another person from acquiring control of our company. These provisions, which are summarized below, may have the effect of discouraging takeover bids. 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 are 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 business combination is approved in a prescribed manner. A “business combination” includes mergers, asset sales, or other transactions resulting in a financial benefit to the stockholder. An “interested stockholder” is 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 a change in our control.

Restated Certificate of Incorporation and Restated Bylaws Provisions

Our restated certificate of incorporation and our restated bylaws will include a number of provisions that could deter hostile takeovers or delay or prevent changes in control of our management team, including the following:

• Dual Class Common Stock. As described above in the section titled “—Common Stock—Voting Rights,” our restated certificate of incorporation will provide for a dual class common stock structure pursuant to which holders of our Class B common stock will have the ability to control the outcome of...
matters requiring stockholder approval, even if they own significantly less than a majority of the shares of our outstanding Class A and Class B common stock, including the election of directors and significant corporate transactions, such as a merger or other sale of our company or its assets. Current investors, executives, and employees will have the ability to exercise significant influence over those matters.

• **Board of Directors Vacancies**. Our restated certificate of incorporation and restated bylaws 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 is 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 makes it more difficult to change the composition of our board of directors but promotes continuity of management.

• **Classified Board**. Following this offering, our restated certificate of incorporation and restated bylaws will provide that our board of directors will be classified into three classes of directors. Directors may be removed from office only for cause. The existence of a classified board of directors could delay a successful tender offeror from obtaining majority control of our board of directors, and the prospect of that delay might deter a potential offeror. See the section titled “Management—Board of Directors Composition” for additional information.

• **Supermajority Requirements for Amendments of Our Restated Certificate of Incorporation and Restated Bylaws**. Our restated certificate of incorporation will further provide that the affirmative vote of holders of at least 66 2/3% of the voting power of all of the then outstanding shares of voting stock will be required to amend certain provisions of our restated certificate of incorporation, including provisions relating to the classified board, the size of the board, removal of directors, special meetings, actions by written consent, and designation of our preferred stock. In addition, the affirmative vote of holders of 75% of the voting power of each of our Class A common stock and Class B common stock, voting separately by class, will be required to amend the provisions of our restated certificate of incorporation relating to the terms of our Class B common stock. The affirmative vote of holders of at least 66 2/3% of the voting power of all of the then outstanding shares of voting stock will be required to amend or repeal our restated bylaws, although our restated bylaws may be amended by a simple majority vote of our board of directors.

• **Stockholder Action; Special Meeting of Stockholders**. Our restated certificate of incorporation provides 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, or our chief executive officer.

• **Advance Notice Requirements for Stockholder Proposals and Director Nominations**. Our restated bylaws 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 restated bylaws 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 might 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 the right to cumulate votes in the election of directors unless a corporation’s certificate of incorporation provides otherwise. Our restated certificate of incorporation and restated bylaws do not provide for cumulative voting.

• **Issuance of “Blank Check” Preferred Stock**. After the filing of our restated certificate of incorporation, our board of directors will have the authority, without further action by the stockholders, to issue up to shares of “blank check” 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 enables 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 otherwise.

- **Choice of Forum**. Our restated certificate of incorporation will provide that the Court of Chancery of the State of Delaware will be the exclusive forum for: any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our restated certificate of incorporation, or our restated bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. There are several pending lawsuits challenging the validity of choice of forum provisions in other companies’ organizational documents. It is possible that a court could rule that such a provision is inapplicable or unenforceable.

**Listing**

We intend to apply to list our Class A common stock on the New York Stock Exchange under the symbol “FIT.”

**Transfer Agent and Registrar**

The transfer agent and registrar for our Class A common stock is Computershare Trust Company, N.A. The transfer agent’s address is 250 Royall Street, Canton, Massachusetts 02021.
SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our Class A common stock, and we cannot predict the effect, if any, that market sales of shares of our Class A common stock or the availability of shares of our Class A common stock for sale will have on the market price of our Class A common stock prevailing from time to time. Nevertheless, sales of substantial amounts of our Class A common stock, including shares issued upon exercise of outstanding stock options or warrants or settlement of RSUs, in the public market following this offering could adversely affect market prices prevailing from time to time and could impair our ability to raise capital through the sale of our equity securities.

Following the completion of this offering, based on the number of shares of our capital stock outstanding as of March 31, 2015, we will have a total of shares of our Class A common stock outstanding and shares of our Class B common stock outstanding. Of these outstanding shares, all of the shares of Class A 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. Shares of our Class B common stock are convertible into an equivalent number of shares of our Class A common stock and generally convert into shares of our Class A common stock upon transfer.

The remaining outstanding shares of our Class A and Class B common stock will be 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 under the Securities Act or if they qualify for an exemption from registration under Rule 144 or Rule 701 promulgated under the Securities Act, which rules are summarized below. In addition, all of our security holders 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 at least 180 days following the date of this prospectus, as described below. As a result of these agreements and the provisions of our third amended and restated investors’ rights agreement described above in the section titled “Description of Capital Stock—Registration Rights,” subject to the provisions of Rule 144 or Rule 701, shares will be available for sale in the public market as follows:

- beginning on the date of this prospectus, the shares sold in this offering will be immediately available for sale in the public market;
- beginning 181 days after the date of this prospectus, subject to extension as described in the section titled “Underwriters,” additional shares 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; and
- the remainder of the shares will be eligible for sale in the public market from time to time thereafter subject to vesting and, in some cases, to the volume and other restrictions of Rule 144, as described below.

Lock-Up Agreements and Market Standoff Provisions

All of our directors, executive officers, and the holders of substantially all of our outstanding equity securities are subject to lock-up agreements with the underwriters or market standoff provisions in agreements with us that, subject to certain exceptions, prohibit them from offering for sale, selling, contracting to sell, granting any option for the sale of, transferring, or otherwise disposing of any shares of our common stock, options, or warrants to acquire shares of our common stock, or any security or instrument related to this common stock, option, or warrant for a period of at least 180 days following the date of this prospectus, without the prior written consent of Morgan Stanley & Co. LLC or us, as the case may be. See the section titled “Underwriters” for additional information.
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 proposed to be sold for at least six months, including the holding period of any prior owner other than our affiliates, 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 on behalf of our affiliates are entitled to sell upon expiration of the lock-up and market standoff provisions 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 Class A common stock then outstanding, which will equal approximately [number] shares immediately after this offering; or

• the average weekly trading volume of our Class A 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 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 by that rule to wait until 90 days after the date of this prospectus before selling those shares pursuant to Rule 701. Moreover, all Rule 701 shares are subject to lock-up agreements or market standoff provisions as described above and under the section titled “Underwriters” and will not become eligible for sale until the expiration of those agreements.

Registration Statement

We intend to file a registration statement on Form S-8 under the Securities Act covering all of the shares of our Class B common stock subject to outstanding stock options and RSUs and shares of our Class A common stock reserved for issuance under our equity incentive plans. We expect to file this registration statement on, or as soon as practicable after, the effective date of this prospectus. However, the shares registered on Form S-8 will not be eligible for resale until expiration of the lock-up agreements and market standoff provisions to which they are subject.

Registration Rights

We have granted demand, piggyback, and Form S-3 registration rights to certain of our stockholders to sell our common stock. Registration of the sale of these shares under the Securities Act would result in these shares becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration, except for shares purchased by affiliates. See the section titled “Description of Capital Stock—Registration Rights” for additional information.
MATERIAL U.S. FEDERAL TAX CONSEQUENCES TO NON-U.S. HOLDERS OF OUR CLASS A COMMON STOCK

The following summary describes the material U.S. federal income tax considerations of the acquisition, ownership, and disposition of our Class A common stock by “non-U.S. holders” (as described below under the section titled “—Non-U.S. Holder Defined”). This summary does not address all aspects of U.S. federal income tax considerations relating thereto. This summary also 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, except to the limited extent provided below.

Special rules different from those described below may apply to certain non-U.S. holders that are subject to special treatment under the Code including, without limitation:

- banks, insurance companies, or other financial institutions;
- corporations that accumulate earnings to avoid U.S. federal income tax;
- persons subject to the alternative minimum tax or Medicare contribution tax;
- tax-exempt entities (including private foundations) or tax-qualified retirement plans;
- controlled foreign corporations or passive foreign investment companies;
- persons who acquired our common stock as compensation for services;
- dealers in securities or currencies;
- traders in securities that elect to use a mark-to-market method of accounting for their securities holdings;
- persons that own, or are deemed to own, more than 5% of our capital stock (except to the extent specifically set forth below);
- U.S. expatriates, certain former citizens, or long-term residents of the United States;
- persons who hold our common stock as a position in a hedging transaction, “straddle,” “conversion transaction,” or other risk reduction transaction;
- persons who do not hold our common stock as a capital asset within the meaning of Section 1221 of the Code (generally, for investment purposes); or
- persons deemed to sell our common stock under the constructive sale provisions of the Code.

In addition, if a partnership or an entity or an arrangement classified as a partnership or other pass-through entity for U.S. federal income tax purposes is a beneficial owner of our Class A common stock, the tax treatment of a partner in the partnership or an owner of the entity will depend upon the status of the partner or other owner and the activities of the partnership or other entity. Therefore, this summary does not address tax considerations applicable to partnerships that hold our Class A common stock, and partners in such partnerships should consult their tax advisors.

This summary also does not address tax considerations applicable to entities that are disregarded for U.S. federal income tax purposes (regardless of their place of organization or formation).

The information provided below is based upon provisions of the Code, Treasury regulations promulgated thereunder, administrative rulings and judicial decisions as of the date hereof. Such authorities may be subject to differing interpretations, repealed, revoked or modified, perhaps retroactively, so as to result in U.S. federal income tax consequences different from those discussed below. We have not requested a ruling from the Internal Revenue Service, or IRS, with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS will not take a contrary position regarding the tax consequences of the acquisition, ownership, and disposition of our Class A common stock, or that any such
contrary position would not be sustained by a court. In either case, the tax considerations of owning or disposing of our Class A common stock could differ from those described below and as a result, we cannot assure you that the tax consequences described in this discussion will not be challenged by the IRS or will be sustained by a court if challenged by the IRS.

INVESTORS CONSIDERING THE PURCHASE OF OUR CLASS A COMMON STOCK SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE APPLICATION OF THE U.S. FEDERAL INCOME AND ESTATE TAX LAWS TO THEIR PARTICULAR SITUATIONS AND THE CONSEQUENCES OF FOREIGN, STATE, OR LOCAL LAWS, AND TAX TREATIES.

Non-U.S. Holder Defined

For purposes of this summary, a “non-U.S. holder” is any beneficial owner of our Class A common stock, other than a partnership, that is not:

• an individual who is a citizen or resident of the United States (as determined under U.S. federal income tax rules);
• a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized under the laws of the United States, any state therein, or the District of Columbia;
• a trust if it (i) is subject to the primary supervision of a court within the United States and one or more U.S. persons have authority to control all substantial decisions of the trust or (ii) has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person; or
• an estate whose income is subject to U.S. income tax regardless of its source.

If you are a non-U.S. citizen that is an individual, you may, in some cases, be deemed to be a resident alien (as opposed to a nonresident alien) by virtue of being present in the United States for at least 31 days in the calendar year and for an aggregate of at least 183 days during a three-year period ending in the current calendar year. Generally, for this purpose, all the days present in the current year, one-third of the days present in the immediately preceding year, and one-sixth of the days present in the second preceding year, are counted.

Resident aliens are generally subject to U.S. federal income tax as if they were U.S. citizens. Such an individual is urged to consult his or her own tax advisor regarding the U.S. federal income tax consequences of the ownership or disposition of our Class A common stock.

Distributions

We do not expect to declare or make any distributions on our Class A common stock in the foreseeable future. If we do make distributions on our Class A common stock, however, such distributions will generally constitute dividends for U.S. federal income tax purposes to the extent it is paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Distributions in excess of our current and accumulated earnings and profits will constitute a return of capital that is applied against and reduces, but not below zero, a non-U.S. holder’s adjusted tax basis in our Class A common stock. Any remaining excess will be treated as gain realized on the sale or exchange of our Class A common stock as described below under the section titled “—Gain on Disposition of our Class A Common Stock.” The amount of any distribution of property other than cash will be the fair market value of that property on the date of distribution.

Any distribution on our Class A common stock that is treated as a dividend paid to a non-U.S. holder that is not effectively connected with the non-U.S. holder’s conduct of a trade or business in the United States will generally be subject to U.S. withholding tax at a 30% rate or such lower rate as may be specified under the terms of an applicable income tax treaty between the United States and the non-U.S. holder’s country of residence. Non-U.S. holders should consult their tax advisors regarding their entitlement to benefits under a relevant income tax treaty.
tax treaty. Generally, in order for us or our paying agent to withhold tax at a lower treaty rate, a non-U.S. holder must certify its entitlement to treaty benefits. A non-U.S. holder generally can meet this certification requirement by providing a properly executed Form W-8BEN or Form W-8BEN-E (or any successor of such forms) or appropriate substitute form to us or our paying agent. In the case of a non-U.S. holder that is an entity, Treasury regulations and the relevant tax treaty provide rules to determine whether, for purposes of determining the applicability of a tax treaty, dividends will be treated as paid to the entity or to those holding an interest in that entity. If the non-U.S. holder holds the stock through a financial institution or other agent acting on the holder’s behalf, the holder will be required to provide appropriate documentation to the agent. The holder’s agent will then be required to provide certification to us or our paying agent, either directly or through other intermediaries. A non-U.S. holder that is eligible for a reduced rate of U.S. federal withholding tax under an income tax treaty with the United States may obtain a refund or credit of any excess amounts withheld by filing an appropriate claim for a refund with the IRS in a timely manner.

Dividends received by a non-U.S. holder that are effectively connected with a U.S. trade or business conducted by the non-U.S. holder, and if required by an applicable income tax treaty between the United States and the non-U.S. holder’s country of residence, are attributable to a permanent establishment maintained by the non-U.S. holder in the United States, are not subject to U.S. withholding tax. To obtain this exemption, a non-U.S. holder must provide us or our paying agent with a properly executed IRS Form W-8ECI certifying such exemption. Such effectively connected dividends, although not subject to withholding tax, are taxed at the same graduated rates applicable to U.S. persons, net of certain deductions and credits. In addition to being taxed at graduated income tax rates, dividends received by corporate non-U.S. holders that are effectively connected with a U.S. trade or business of the corporate non-U.S. holder may also be subject to an additional “branch profits tax,” which is imposed, under certain circumstances, at a rate of 30% (or such lower rate as may be specified by an applicable tax treaty) on the corporate non-U.S. holder’s effectively connected earnings and profits, subject to certain adjustments.

See the section titled “—Foreign Accounts” for additional information on withholding rules that may apply to dividends paid to foreign financial institutions (as specifically defined by the applicable rules), or to non-financial foreign entities that have substantial direct or indirect U.S. owners.

Gain on Disposition of our Class A Common Stock

Subject to the discussions below under the sections titled “—Backup Withholding and Information Reporting” and “—Foreign Accounts,” non-U.S. holders will generally not be subject to U.S. federal income tax on gain realized on the sale, exchange or other disposition of our Class A common stock unless:

(a) the gain is effectively connected with the conduct by the non-U.S. holder of a U.S. trade or business and if required by an applicable income tax treaty between the United States and the non-U.S. holder’s country of residence, is attributable to a permanent establishment maintained by the non-U.S. holder in the United States;

(b) the non-U.S. holder is a nonresident individual and is present in the United States for 183 days or more in the taxable year of the sale, exchange or other disposition of our Class A common stock, and certain other requirements are met; or

(c) the rules of the Foreign Investment in Real Property Tax Act, or FIRPTA, apply to treat the gain as effectively connected with a U.S. trade or business.

A non-U.S. holder described in (a) above, will be required to pay tax on the net gain derived from the sale, exchange or other disposition of our Class A common stock at regular graduated U.S. federal income tax rates, unless a specific treaty exemption applies, and corporate non-U.S. holders described in (a) above may be subject to the additional branch profits tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

An individual non-U.S. holder described in (b) above, will be required to pay a flat 30% tax on the gain derived from the sale, exchange or other disposition of our Class A common stock, or such other reduced rate as
may be specified by an applicable income tax treaty, which gain may be offset by U.S. source capital losses (even though the non-U.S. holder is not considered a resident of the United States).

With respect to (c) above, in general, the FIRPTA rules may apply to a sale, exchange or other disposition of our Class A common stock if we, or were within the shorter of the five-year period preceding the disposition and the non-U.S. holder’s holding period, a U.S. real property holding corporation, or USRPHC. We do not believe that we are a USRPHC and we do not anticipate becoming a USRPHC in the future. Even if we become a USRPHC, gain realized by a non-U.S. holder on a disposition of our Class A common stock will not be subject to U.S. federal income tax under FIRPTA as long as (1) our common stock is regularly traded on an established securities market, and (2) the non-U.S. holder owned, directly, indirectly and constructively, no more than 5% of our outstanding common stock at all times within the shorter of (i) the five-year period preceding the disposition or (ii) the holder’s holding period.

See the section titled “—Foreign Accounts” for additional information regarding additional withholding rules that may apply to proceeds of a disposition of our Class A common stock paid to foreign financial institutions (as specifically defined by the applicable rules), or to non-financial foreign entities that have substantial direct or indirect U.S. owners.

U.S. Federal Estate Tax

The estates of nonresident alien individuals generally are subject to U.S. federal estate tax on property with a U.S. situs. Because we are a U.S. corporation, our common stock will be U.S. situs property and therefore will be included in the taxable estate of a nonresident alien decedent, unless an applicable estate tax treaty between the United States and the decedent’s country of residence provides otherwise. Investors are urged to consult their own tax advisors regarding the U.S. federal estate tax consequences of the ownership or disposition of our Class A common stock.

Backup Withholding and Information Reporting

The Code and the Treasury regulations require those who make specified payments to report the payments to the IRS. Among the specified payments are dividends and proceeds paid by brokers to their customers. The required information returns enable the IRS to determine whether the recipient properly included the payments in income. This reporting regime is reinforced by “backup withholding” rules. These rules require the payors to withhold tax from payments subject to information reporting if the recipient fails to comply with the reporting requirements by failing to provide his taxpayer identification number or other certification of exempt status to the payor, furnishing an incorrect identification number, or failing to report interest or dividends on his returns. The backup withholding tax rate is currently 28%. The backup withholding rules do not apply to payments to corporations, whether domestic or foreign, provided they establish such exemption.

Payments to non-U.S. holders of dividends on common stock generally will not be subject to backup withholding, and payments of proceeds made to non-U.S. holders by a broker upon the sale of common stock will not be subject to information reporting or backup withholding, in each case so long as the non-U.S. holder certifies its nonresident status (and we or our paying agent do not have actual knowledge or reason to know the holder is a U.S. person or that the conditions of any other exemption are not, in fact, satisfied) or otherwise establishes an exemption. U.S. backup withholding generally will not apply to a non-U.S. holder who provides a properly executed IRS Form W-8BEN, IRS Form W-8BEN-E or otherwise establishes an exemption. We must report annually to the IRS any dividends paid to each non-U.S. holder and the tax withheld, if any, with respect to these dividends. Copies of these reports may be made available to tax authorities in the country where the non-U.S. holder resides.

Under the Treasury regulations, the payment of proceeds from the disposition of shares of our common stock by a non-U.S. holder made to or through a U.S. office of a broker generally will be subject to information reporting and backup withholding unless the beneficial owner certifies, under penalties of perjury, among other things, its status as a non-U.S. holder (and the broker does not have actual knowledge or reason to know the
holder is a U.S. person) or otherwise establishes an exemption. The payment of proceeds from the disposition of shares of our common stock by a non-U.S. holder made to or through a non-U.S. office of a broker generally will not be subject to backup withholding and information reporting, except as noted below. Information reporting, but not backup withholding, will apply to a payment of proceeds, even if that payment is made outside of the United States, if a non-U.S. holder sells our common stock through a non-U.S. office of a broker that is:

- a U.S. person (including a foreign branch or office of such person);
- a “controlled foreign corporation” for U.S. federal income tax purposes;
- a foreign person 50% or more of whose gross income from certain periods is effectively connected with a U.S. trade or business; or
- a foreign partnership if at any time during its tax year (a) one or more of its partners are U.S. persons who, in the aggregate, hold more than 50% of the income or capital interests of the partnership or (b) the foreign partnership is engaged in a U.S. trade or business,

unless the broker has documentary evidence that the beneficial owner is a non-U.S. holder and certain other conditions are satisfied, or the beneficial owner otherwise establishes an exemption (and the broker has no actual knowledge or reason to know to the contrary).

Backup withholding is not an additional tax. Any amounts withheld from a payment to a holder of common stock under the backup withholding rules can be credited against any U.S. federal income tax liability of the holder and may entitle the holder to a refund, provided that the required information is furnished to the IRS in a timely manner.

Foreign Accounts

Sections 1471 through 1474 of the Code, commonly referred to as the Foreign Account Tax Compliance Act, or FATCA, and applicable Treasury regulations thereunder, impose a withholding tax of 30% on certain “withholdable payments,” including dividends and the gross proceeds of a disposition of our Class A common stock paid to a foreign financial institution (as specifically defined by the applicable rules) unless such institution enters into an agreement with the U.S. government to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which includes certain equity holders of such institution, as well as certain account holders that are foreign entities with U.S. owners). The FATCA withholding tax of 30% will also apply to dividends and the gross proceeds of a disposition of our Class A common stock paid to a non-financial foreign entity unless such entity provides the withholding agent with either a certification that it does not have any substantial direct or indirect U.S. owners or provides information regarding direct and indirect U.S. owners of the entity. The 30% withholding tax described in this paragraph cannot be reduced under an income tax treaty with the United States or by providing an IRS Form W-8BEN or similar documentation. The withholding tax described above will not apply if the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from the rules. Under certain circumstances, a non-U.S. holder might be eligible for refunds or credits of such taxes. Holders should consult with their own tax advisors regarding the possible implications of the withholding described herein.

The withholding provisions described above generally apply to payments of dividends made on or after July 1, 2014 and to payments of gross proceeds from a sale or other disposition of Class A common stock on or after January 1, 2017.

THE PRECEDING DISCUSSION OF U.S. FEDERAL TAX CONSIDERATIONS IS FOR GENERAL INFORMATION PURPOSES ONLY. IT IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN TAX ADVISOR REGARDING THE PARTICULAR U.S. FEDERAL, GIFT, ESTATE, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF PURCHASING, HOLDING, AND DISPOSING OF OUR CLASS A COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAWS.
UNDERWRITERS

Under the terms and subject to the conditions to be contained in an underwriting agreement, the underwriters named below, for whom Morgan Stanley & Co. LLC, Deutsche Bank Securities Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated are acting as representatives, will severally agree to purchase, and we and the selling stockholders will agree to sell to them, severally, the number of shares of Class A common stock 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>
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<tr>
<td>Deutsche Bank Securities Inc.</td>
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<tr>
<td>Merrill Lynch, Pierce, Fenner &amp; Smith Inc.</td>
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<tr>
<td>Barclays Capital Inc.</td>
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<td>SunTrust Robinson Humphrey, Inc.</td>
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<td>Piper Jaffray &amp; Co.</td>
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<td>Raymond James &amp; Associates, Inc.</td>
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<tr>
<td>Stifel, Nicolaus &amp; Company, Incorporated</td>
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<tr>
<td>William Blair &amp; Company, L.L.C.</td>
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<tr>
<td>Total</td>
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The underwriters will offer the shares of Class A common stock subject to their acceptance of the shares from us and the selling stockholders and subject to prior sale. The underwriting agreement will provide that the obligations of the several underwriters to pay for and accept delivery of the shares of Class A 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 will be obligated to take and pay for all of the shares of Class A common stock offered by this prospectus if any such shares are taken. However, the underwriters will not be required to take or pay for the shares covered by the underwriters’ over-allotment option described below.

The underwriters initially propose to offer part of the shares of Class A 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 Class A common stock, the offering price and other selling terms may from time to time be varied by the representatives.

We and the selling stockholders will grant to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to additional shares of Class A 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 Class A 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 Class A common stock as the number listed next to the underwriter’s name in the preceding table bears to the total number of shares of Class A 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 and the selling stockholders. These amounts are shown assuming both no exercise and full exercise of the underwriters’ option to purchase up to additional shares of Class A common stock to cover over-allotments.

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<th>Per Share</th>
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<th>Full Exercise</th>
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<tr>
<td>Public offering price</td>
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<tr>
<td>Underwriting discounts and commissions to be paid by:</td>
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<td>The selling stockholders</td>
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<td>Proceeds before expenses, to us</td>
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<tr>
<td>Proceeds before expenses, to selling stockholders</td>
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The estimated offering expenses, exclusive of the underwriting discounts and commissions, are approximately $ million. We have agreed to reimburse the underwriters for expenses relating to clearance of this offering with the Financial Industry Regulatory Authority, Inc., or FINRA, 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 Class A common stock offered by them.

We intend to apply to list our Class A common stock on the New York Stock Exchange under the trading symbol “FIT.”

We, all of our directors and officers, and the holders of substantially all of our outstanding equity securities have agreed or will agree that, without the prior written consent of Morgan Stanley & Co. LLC on behalf of the underwriters, we and they will not, for 180 days after the date of this prospectus:

• 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, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Class A common stock, Class B common stock, or any securities convertible into or exercisable or exchangeable for shares of Class A common stock or Class B common stock;

• enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of Class A common stock or Class B common stock, whether any such transaction described in the first two bullet points is to be settled by delivery of Class A common stock, Class B common stock, or such other securities, in cash or otherwise;

• in the case of our directors, officers, and security holders, make any demand for or exercise any right with respect to, the registration of any shares of Class A common stock, Class B common stock, or any securities convertible into or exercisable or exchangeable for Class A common stock or Class B common stock;

• in our case, file any registration statement with the SEC relating to the offering of any shares of Class A common stock, Class B common stock, or any securities convertible into or exercisable or exchangeable for Class A common stock or Class B common stock, except for the filing of registration statements on Form S-8 with respect to the employee benefit plans described in this prospectus; or

• in our case, make any public announcement of any intention to do any of the foregoing.

The restrictions described in the immediately preceding paragraph shall not apply to:

• in the case of our directors, officers, and security holders, transactions relating to shares of Class A common stock or other securities acquired in open market transactions after the completion of this
offering, provided that no filing under Section 16(a) of the Exchange Act is required or voluntarily made during the 180-day restricted period in connection with subsequent sales of Class A common stock or other securities acquired in such open market transactions;

• the sale of shares of Class A common stock pursuant to the underwriting agreement;

• in the case of our directors, officers, and security holders, transfers of shares of Class A common stock, Class B common stock, or any securities convertible into or exercisable or exchangeable for Class A common stock or Class B common stock by the locked-up party (i) as a bona fide gift, or gifts, or for bona fide estate planning purposes, (ii) upon death or by will, testamentary document, or intestate succession, (iii) to an immediate family member of the locked-up party or to any trust for the direct or indirect benefit of the locked-up party or one or more immediate family members of the locked-up party, (iv) not involving a change in beneficial ownership, or (v) if the locked-up party is a trust, to any trustee or beneficiary of the locked-up party or the estate of any such trustee or beneficiary;

• in the case of our directors, officers, and security holders, transfers or distributions of shares of Class A common stock, Class B common stock, or any securities convertible into or exercisable or exchangeable for Class A common stock or Class B common stock by a locked-up party that is a corporation, partnership, limited liability company, or other business entity (i) to another corporation, partnership, limited liability company, or other business entity that controls, is controlled by or managed by, or is under common control with such locked-up party, or (ii) as part of a transfer or distribution to an equity holder of such locked-up party or to the estate of any such locked-up party;

• in the case of our directors, officers, and security holders, (i) the receipt by the locked-up party from us of shares of Class A common stock or Class B common stock upon (A) the exercise or settlement of stock options or RSUs granted under a stock incentive plan or other equity award plan described in this prospectus or (B) the exercise of warrants outstanding and which are described in this prospectus, or (ii) the transfer of shares of Class A common stock, Class B common stock, or any securities convertible into Class A common stock or Class B common stock upon a vesting or settlement event of our securities or upon the exercise of options or warrants to purchase our securities on a “cashless” or “net exercise” basis to the extent permitted by the instruments representing such options or warrants (and any transfer to us necessary to generate such amount of cash needed for the payment of taxes, including estimated taxes, due as a result of such vesting or exercise whether by means of a “net settlement” or otherwise) so long as such “cashless exercise” or “net exercise” is effected solely by the surrender of outstanding stock options or warrants (or the Class A common stock or Class B common stock issuable upon the exercise thereof) to us and our cancellation of all or a portion thereof to pay the exercise price or withholding tax and remittance obligations, provided that in the case of (i), the shares received upon such exercise or settlement are subject to the restrictions set forth above, and provided further that in the case of (ii), any filings under Section 16(a) of the Exchange Act, or any other public filing or disclosure of such transfer by or on behalf of the locked-up party, shall clearly indicate in the footnotes thereto that such transfer of shares or securities was solely to us pursuant to the circumstances described in this bullet point;

• the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Class A common stock or Class B common stock, provided that such plan does not provide for the transfer of Class A common stock or Class B common stock during the 180-day restricted period and, to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by or on behalf of the locked-up party or us regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of Class A common stock or Class B common stock may be made under such plan during the 180-day restricted period;

• in the case of our directors, officers, and security holders, transfers of shares of Class A common stock, Class B common stock, or any securities convertible into or exercisable or exchangeable for Class A common stock or Class B common stock that occurs by operation of law pursuant to a qualified domestic order in connection with a divorce settlement or other court order;
• in the case of our directors, officers, and security holders, transfers of shares of Class A common stock, Class B common stock, or any securities convertible into or exercisable or exchangeable for Class A common stock or Class B common stock to us pursuant to arrangements under which we have the option to repurchase such shares or securities at the lower of cost or fair market value in connection with the termination of employment or service of the locked-up party or a right of first refusal with respect to the transfers of such shares or securities;

• in the case of our directors, officers, and security holders, the conversion or reclassification of our outstanding convertible preferred stock or other classes of common stock into shares of Class B common stock in connection with this offering and the conversion of Class B common stock to Class A common stock in accordance with our restated certificate of incorporation, provided that any such shares of Class A common stock or Class B common stock received upon such conversion or reclassification shall remain subject to the restrictions set forth above;

• in the case of our directors, officers, and security holders, the transfer of shares of Class A common stock, Class B common stock, or any securities convertible into or exercisable or exchangeable for Class A common stock or Class B common stock pursuant to a bona fide third-party tender offer, merger, consolidation, or other similar transaction that is approved by our board of directors, made to all holders of Class A common stock or Class B common stock involving the transfer (whether by tender offer, merger, consolidation or other similar transaction), in one or a series of related transactions, to a person or group of affiliated persons (other than an underwriter pursuant to this offering), of our voting securities if, after such transfer, such person or group of affiliated persons would hold more than 50% of our outstanding voting securities, after the completion of this offering, provided, that in the event that the tender offer, merger, consolidation, or other such transaction is not completed, the Class A common stock or Class B common stock owned by the locked-up party shall remain subject to the restrictions set forth above;

• the issuance by us of shares of Class A common stock or Class B common stock upon the exercise (including net exercise) of a stock option or warrant, the settlement of RSUs (including net settlement), or the conversion of a security outstanding as of the date of this prospectus, provided that such stock option, warrant, RSU, or security is identified in this prospectus;

• the issuance by us of stock options, RSUs, or restricted stock awards (including Class A common stock or Class B common stock issued upon the settlement or exercise thereof) to our employees, officers, directors, advisors, or consultants pursuant to our employee benefit plans described in this prospectus;

• our sale or issuance of or entry into an agreement to sell or issue shares of Class A common stock or Class B common stock in connection with joint ventures, commercial relationships, or other strategic transactions and our acquisition of one or more businesses, assets, products, or technologies, provided, that the aggregate number of shares of Class A common stock or Class B common stock that we may sell or issue or agree to sell or issue pursuant to this bullet point does not exceed % of the total number of shares of Class A common stock and Class B common stock issued and outstanding immediately following the completion of this offering, and provided, further, that all such recipients of shares of Class A common stock or Class B common stock shall sign and deliver a lock-up letter on or prior to such issuance and upon such issuance the shares will be subject to the restrictions above; and

• the issuance by us of the aggregate number of shares of Class A common stock or Class B common stock issued in connection with our acquisition of FitStar as described in this prospectus, provided, that all such recipients of shares of Class A common stock or Class B common stock shall sign and deliver a lock-up letter on or prior to such issuance and upon such issuance the shares will be subject to the restrictions above;

provided that in the case of any transfer or distribution pursuant to the third, fourth, or seventh bullet points above, each transferee, donee, or distributee shall sign and deliver a lock-up letter with the same restrictions as set forth above;
If at any time set forth below, we cease to be an “emerging growth company” as defined in Section 3(a)(80) of the Exchange Act, then:

• during the last 17 days of the 180-day restricted period, we issue an earnings release or material news or a material event relating to us occurs; or

• prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day restricted period,

the 180-day restricted period described above will continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

Morgan Stanley & Co. LLC, in its 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 with or without notice, provided that, when and as required by FINRA Rule 5131, at least two business days before the release or waiver of any applicable lock-up, Morgan Stanley & Co. LLC will notify us of the impending release or waiver and announce the impending release or waiver through a major news service, except where the release or waiver is effected solely to permit a transfer of securities that is not for consideration and where the transferee has agreed in writing to be bound by the same lock-up agreement terms in place for the transferor.

In order to facilitate the offering of the Class A common stock, the underwriters may engage in transactions that stabilize, maintain, or otherwise affect the price of the Class A 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 their option to purchase additional shares. The underwriters can close out a covered short sale by exercising the option to purchase additional shares 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 option to purchase additional shares of common stock. The underwriters may also sell shares in excess of their option to purchase additional shares of common stock, 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 Class A 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 Class A common stock in the open market to stabilize the price of the Class A common stock. These activities may raise or maintain the market price of the Class A common stock above independent market levels or prevent or retard a decline in the market price of the Class A common stock. The underwriters are not required to engage in these activities and may end any of these activities at any time. The underwriters may carry out these transactions on the New York Stock Exchange, in the over-the-counter market, or otherwise.

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We, the selling stockholders, and the underwriters will agree 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 Class A 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.

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 August 2014, we entered into the Asset-Based Credit Facility with six lenders, including affiliates of Morgan Stanley & Co. LLC, SunTrust Robinson Humphrey, Inc., and Deutsche Bank Securities Inc., which allows us to borrow up to $180.0 million in revolving loans, and the Cash Flow Facility with four lenders, including affiliates of Morgan Stanley & Co. LLC and SunTrust Robinson Humphrey, Inc., to borrow up to an additional $40.0 million in revolving loans. In October 2014, we entered into an incremental commitment joinder agreement with an affiliate of Barclays Capital Inc., increasing the borrowing limit under the Cash Flow Facility to allow us to borrow up to $50.0 million in total. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources” for additional information.

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 the completion of this offering, there will be no public market for our Class A common stock. The initial public offering price will be determined by negotiations among us, the selling stockholders, and the representatives. Among the factors we intend to consider in determining the initial public offering price are prevailing market conditions, our financial information, market valuations of other companies that we and the underwriters believe to be comparable to us, estimates of our business potential, the present state of our development and other factors deemed relevant.

**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 Class A 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 Class A common stock may be made at any time under the following exemptions under the Prospectus Directive, if they have been implemented in that Relevant Member State:

(i) to any legal entity which is a qualified investor as defined in the Prospectus Directive;
to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the representatives for any such offer; or

(iii) in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of shares of our Class A 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 Class A 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 Class A common stock to be offered so as to enable an investor to decide to purchase any shares of our Class A 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 (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in the Relevant Member State, and the expression “2010 PD Amending Directive” means Directive 2010/73/EU.

**United Kingdom**

Each underwriter has represented and agreed that:

(i) 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 FSMA) received by it in connection with the issue or sale of the shares of our Class A common stock in circumstances in which Section 21(1) of the FSMA does not apply to us; and

(ii) 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 Class A common stock in, from, or otherwise involving the United Kingdom.

**Hong Kong**

Shares of our Class A common stock may not be offered or sold by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), (ii) to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a “prospectus” within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), and no advertisement, invitation, or document relating to shares of our Class A common stock may be issued or may be in the possession of any person for the purpose of issue (in each case 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 in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to shares of our Class A common stock which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

**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 shares of our Class A common stock may not be circulated or
Where shares of our Class A common stock are subscribed or purchased under Section 275 by a relevant person which is: (i) a corporation (which is not an accredited investor) 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 (ii) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that trust shall not be transferable for six months after that corporation or that trust has acquired shares of our Class A common stock under Section 275 except: (i) to an institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA; (ii) where no consideration is given for the transfer; or (iii) by operation of law.

**Japan**

Shares of our Class A common stock have not been and will not be registered under the Financial Instruments and Exchange Law of Japan, or Financial Instruments and Exchange Law, and each underwriter has agreed that it will not offer or sell any shares of our Class A common stock, directly or indirectly, 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 resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations, and ministerial guidelines of Japan.

**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 this 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 our Class A common stock may only be made to persons, or 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 our Class A common stock without disclosure to investors under Chapter 6D of the Corporations Act.

The Class A common stock 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 otherwise or where the offer is pursuant to a disclosure document which complies with Chapter 6D of the Corporations Act. Any person acquiring securities must observe such Australian on-sale restrictions.

This prospectus contains general information only and does not take account of 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 to their needs, objectives and circumstances, and, if necessary, seek expert advice on those matters.

**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 the DFSA. This prospectus is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be 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 Class A common stock to which this prospectus relates may be illiquid or subject to restrictions on its resale. Prospective purchasers of the Class A common stock offered should conduct their own due diligence on the Class A common stock. If you do not understand the contents of this prospectus you should consult an authorized financial advisor.

**Switzerland**

We have not and will not register with the Swiss Financial Market Supervisory Authority, or FINMA, as a foreign collective investment scheme pursuant to Article 119 of the Federal Act on Collective Investment Scheme of 23 June 2006, as amended, or CISA, and accordingly the securities being offered pursuant to this prospectus have not and will not be approved, and may not be licenseable, with FINMA. Therefore, the securities have not been authorized for distribution by FINMA as a foreign collective investment scheme pursuant to Article 119 CISA and the securities offered hereby may not be offered to the public (as this term is defined in Article 3 CISA) in or from Switzerland. The securities may solely be offered to “qualified investors,” as this term is defined in Article 10 CISA, and in the circumstances set out in Article 3 of the Ordinance on Collective Investment Scheme of 22 November 2006, as amended, or CISO, such that there is no public offer. Investors, however, do not benefit from protection under CISA or CISO or supervision by FINMA. This prospectus and any other materials relating to the securities are strictly personal and confidential to each offeree and do not constitute an offer to any other person. This prospectus may only be used by those qualified investors to whom it has been handed out in connection with the offer described herein and may neither directly or indirectly be distributed or made available to any person or entity other than its recipients. It may not be used in connection with any other offer and shall in particular not be copied or distributed to the public in Switzerland or from Switzerland. This prospectus does not constitute an issue prospectus as that term is understood pursuant to Article 652a or 1156 of the Swiss Federal Code of Obligations. We have not applied for a listing of the securities on the SIX Swiss Exchange or any other regulated securities market in Switzerland, and consequently, the information presented in this prospectus does not necessarily comply with the information standards set out in the listing rules of the SIX Swiss Exchange and corresponding prospectus schemes annexed to the listing rules of the SIX Swiss Exchange.
LEGAL MATTERS

Fenwick & West LLP, Mountain View, California, will pass upon the validity of the issuance of the shares of our Class A common stock offered by this prospectus. Goodwin Procter LLP, Menlo Park, California, is representing the underwriters in this offering.

EXPERTS

The consolidated financial statements of Fitbit, Inc. as of December 31, 2014 and December 31, 2013 and for each of the three years in the period ended December 31, 2014 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 auditing and accounting.

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 our Class A common stock offered under 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 items of which are 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 Class A common stock, we refer you to the registration statement, including the exhibits and the consolidated financial statements and notes filed as a part of the registration statement. Statements contained in this prospectus concerning the contents of any contract or any other document are 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 for the complete contents of that contract or document. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit. A copy of the registration statement, including the exhibits and the consolidated financial statements and related notes filed as a part of the registration statement may be inspected without charge at the SEC’s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549, and copies of all or any part of the registration statement may be obtained from the SEC upon the payment of fees prescribed by it. You may call the SEC at (800) SEC-0330 for more information on the operation of the public reference facilities. The SEC maintains a website at www.sec.gov that contains reports, proxy and information statements, and other information regarding companies that file electronically with it.

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 Fitbit.com. Upon the 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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**Index to Financial Statements**

FITBIT, INC.

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

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<tr>
<td></td>
<td>F-1</td>
</tr>
</tbody>
</table>
To the Board of Directors and Stockholders of Fitbit, Inc.:

In our opinion, the accompanying Consolidated Balance Sheets and the related Consolidated Statements of Operations, Comprehensive Income (Loss), Redeemable Convertible Preferred Stock and Stockholders’ Equity (Deficit), and Cash Flows present fairly, in all material respects, the financial position of Fitbit, Inc. and its subsidiaries at December 31, 2013 and December 31, 2014, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2014 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP
San Francisco, California
March 2, 2015

F-2
FITBIT, INC.
Consolidated Balance Sheets
(In thousands, except share and per share amounts)

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2013</th>
<th>December 31, 2014</th>
<th>March 31, 2015 (Unaudited)</th>
<th>Pro Forma March 31, 2015 (Unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current assets:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$81,728</td>
<td>$195,626</td>
<td>$237,849</td>
<td></td>
</tr>
<tr>
<td>Restricted cash</td>
<td>2,310</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>80,624</td>
<td>238,859</td>
<td>161,736</td>
<td></td>
</tr>
<tr>
<td>Inventories</td>
<td>56,441</td>
<td>115,072</td>
<td>137,509</td>
<td></td>
</tr>
<tr>
<td>Deferred tax assets</td>
<td>—</td>
<td>33,555</td>
<td>35,454</td>
<td></td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>3,185</td>
<td>13,614</td>
<td>22,012</td>
<td></td>
</tr>
<tr>
<td>Total current assets</td>
<td>224,288</td>
<td>596,726</td>
<td>594,560</td>
<td></td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>6,486</td>
<td>26,435</td>
<td>28,022</td>
<td></td>
</tr>
<tr>
<td>Goodwill</td>
<td>—</td>
<td>—</td>
<td>22,562</td>
<td></td>
</tr>
<tr>
<td>Intangible assets, net</td>
<td>—</td>
<td>—</td>
<td>13,812</td>
<td></td>
</tr>
<tr>
<td>Other assets</td>
<td>—</td>
<td>9,890</td>
<td>10,393</td>
<td></td>
</tr>
<tr>
<td>Total assets</td>
<td>$230,774</td>
<td>$633,051</td>
<td>$669,349</td>
<td></td>
</tr>
<tr>
<td><strong>Liabilities, Redeemable Convertible Preferred Stock, and Stockholders’ Equity (Deficit)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current liabilities:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fitbit Force recall reserve</td>
<td>$82,938</td>
<td>$22,476</td>
<td>$15,104</td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>70,896</td>
<td>195,666</td>
<td>136,425</td>
<td></td>
</tr>
<tr>
<td>Accrued liabilities</td>
<td>28,565</td>
<td>70,940</td>
<td>73,860</td>
<td></td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>5,606</td>
<td>9,009</td>
<td>17,024</td>
<td></td>
</tr>
<tr>
<td>Income taxes payable</td>
<td>17,841</td>
<td>30,631</td>
<td>17,723</td>
<td></td>
</tr>
<tr>
<td>Long-term debt, current portion</td>
<td>3,985</td>
<td>132,589</td>
<td>159,611</td>
<td></td>
</tr>
<tr>
<td>Total current liabilities</td>
<td>209,831</td>
<td>461,311</td>
<td>419,747</td>
<td></td>
</tr>
<tr>
<td>Long-term debt, less current portion</td>
<td>6,725</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Redeemable convertible preferred stock warrant liability</td>
<td>4,028</td>
<td>15,797</td>
<td>26,132</td>
<td></td>
</tr>
<tr>
<td>Other liabilities</td>
<td>7,420</td>
<td>12,867</td>
<td>13,750</td>
<td></td>
</tr>
<tr>
<td>Total liabilities</td>
<td>228,084</td>
<td>489,975</td>
<td>439,629</td>
<td></td>
</tr>
<tr>
<td>Commitments and contingencies (Note 8)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Redeemable convertible preferred stock, $0.0001 par value: 96,352,608 shares authorized as of December 31, 2013 and 2014, and March 31, 2015 (unaudited); 93,002,610, 93,234,322 and 93,234,322 shares issued and outstanding as of December 31, 2013 and 2014, and March 31, 2015 (unaudited), respectively; no shares issued or outstanding as of March 31, 2015, pro forma (unaudited); aggregate liquidation preference of $66,619 as of March 31, 2015 (unaudited)</td>
<td>66,236</td>
<td>67,814</td>
<td>67,814</td>
<td></td>
</tr>
<tr>
<td>Stockholders’ equity (deficit):</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common stock, $0.0001 par value, 153,600,000 shares authorized as of December 31, 2013 and 2014 and 163,600,000 shares authorized as of March 31, 2015 (unaudited); 26,760,106, 27,250,391, and 28,274,441 shares issued and outstanding as of December 31, 2013 and 2014, and March 31, 2015 (unaudited), respectively; 121,508,763 shares issued and outstanding as of March 31, 2015, pro forma (unaudited)</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>12</td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>1,066</td>
<td>7,980</td>
<td>26,583</td>
<td>120,520</td>
</tr>
<tr>
<td>Accumulated other comprehensive income</td>
<td>—</td>
<td>37</td>
<td>81</td>
<td>81</td>
</tr>
<tr>
<td>Retained earnings (accumulated deficit)</td>
<td>(64,535</td>
<td>67,242</td>
<td>115,239</td>
<td>115,239</td>
</tr>
<tr>
<td>Total stockholders’ equity (deficit)</td>
<td>(63,466</td>
<td>75,262</td>
<td>$141,906</td>
<td>$235,852</td>
</tr>
<tr>
<td>Total liabilities, redeemable convertible preferred stock and stockholders’ equity (deficit)</td>
<td>$230,774</td>
<td>$633,051</td>
<td>$669,349</td>
<td></td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td>$76,373</td>
<td>$271,087</td>
<td>$745,433</td>
<td>$108,815</td>
</tr>
<tr>
<td><strong>Cost of revenue</strong></td>
<td>49,733</td>
<td>210,836</td>
<td>387,776</td>
<td>64,046</td>
</tr>
<tr>
<td><strong>Gross profit</strong></td>
<td>26,640</td>
<td>60,251</td>
<td>357,657</td>
<td>44,769</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>16,210</td>
<td>27,873</td>
<td>54,167</td>
<td>9,088</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>10,237</td>
<td>26,847</td>
<td>112,005</td>
<td>11,273</td>
</tr>
<tr>
<td>General and administrative</td>
<td>3,968</td>
<td>14,485</td>
<td>33,556</td>
<td>8,617</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>30,415</td>
<td>69,205</td>
<td>199,728</td>
<td>28,978</td>
</tr>
<tr>
<td><strong>Operating income (loss)</strong></td>
<td>(3,775)</td>
<td>(8,954)</td>
<td>157,929</td>
<td>15,791</td>
</tr>
<tr>
<td><strong>Interest expense, net</strong></td>
<td>(176)</td>
<td>(1,082)</td>
<td>(2,222)</td>
<td>(409)</td>
</tr>
<tr>
<td><strong>Other income (expense), net</strong></td>
<td>26</td>
<td>(3,649)</td>
<td>(15,934)</td>
<td>(1,219)</td>
</tr>
<tr>
<td><strong>Income (loss) before income taxes</strong></td>
<td>(3,925)</td>
<td>(13,685)</td>
<td>139,773</td>
<td>14,163</td>
</tr>
<tr>
<td><strong>Income tax expense</strong></td>
<td>291</td>
<td>37,937</td>
<td>7,996</td>
<td>5,291</td>
</tr>
<tr>
<td><strong>Net income (loss)</strong></td>
<td>(4,216)</td>
<td>(51,622)</td>
<td>131,777</td>
<td>7,996</td>
</tr>
<tr>
<td><strong>Net income (loss) attributable to common stockholders—basic</strong></td>
<td>(4,216)</td>
<td>(51,622)</td>
<td>131,777</td>
<td>7,996</td>
</tr>
<tr>
<td>Less: noncumulative dividends to preferred stockholders</td>
<td>—</td>
<td>—</td>
<td>(5,326)</td>
<td>(1,313)</td>
</tr>
<tr>
<td>Less: undistributed earnings to participating securities</td>
<td>—</td>
<td>—</td>
<td>(98,103)</td>
<td>(5,870)</td>
</tr>
<tr>
<td><strong>Net income (loss) attributable to common stockholders—basic</strong></td>
<td>(4,216)</td>
<td>(51,622)</td>
<td>28,348</td>
<td>1,689</td>
</tr>
<tr>
<td><strong>Add: adjustments for undistributed earnings to participating securities</strong></td>
<td>—</td>
<td>—</td>
<td>10,175</td>
<td>570</td>
</tr>
<tr>
<td><strong>Net income (loss) attributable to common stockholders—diluted</strong></td>
<td>$ (4,216)</td>
<td>$ (51,622)</td>
<td>$38,523</td>
<td>$2,259</td>
</tr>
<tr>
<td><strong>Net income (loss) per share attributable to common stockholders:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$(0.17)</td>
<td>$(1.98)</td>
<td>$1.05</td>
<td>$0.06</td>
</tr>
<tr>
<td>Diluted</td>
<td>$(0.17)</td>
<td>$(1.98)</td>
<td>$0.94</td>
<td>$0.06</td>
</tr>
<tr>
<td><strong>Shares used to compute net income (loss) per share attributable to common stockholders:</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>24,506</td>
<td>26,120</td>
<td>26,901</td>
<td>26,770</td>
</tr>
<tr>
<td>Diluted</td>
<td>24,506</td>
<td>26,120</td>
<td>40,786</td>
<td>39,652</td>
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<tr>
<td><strong>Pro forma net income per share attributable to common stockholders (Notes 2 and 15) (unaudited):</strong></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$1.21</td>
<td>$0.48</td>
<td>$0.48</td>
<td>$0.41</td>
</tr>
<tr>
<td>Diluted</td>
<td>$1.07</td>
<td>$0.48</td>
<td>$0.48</td>
<td>$0.41</td>
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</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.

F-4
FITBIT, INC.

Consolidated Statements of Comprehensive Income (Loss)
(In thousands)

<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>2012</td>
<td>2013</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$(4,216)</td>
<td>$(51,622)</td>
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<tr>
<td>Other comprehensive income:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Change in foreign currency translation adjustment, net of tax</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Comprehensive income (loss)</td>
<td>$ (4,216)</td>
<td>$ (51,622)</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.

F-5
## FITBIT, INC.

**Consolidated Statements of Redeemable Convertible Preferred Stock and Stockholders' Equity (Deficit)**

(In thousands except share amounts)

<table>
<thead>
<tr>
<th></th>
<th>Redeemable Convertible Preferred Stock</th>
<th>Common Stock</th>
<th>Additional Paid-In Capital</th>
<th>Accumulated Other Comprehensive Income</th>
<th>Retained Earnings (Accumulated Deficit)</th>
<th>Total Stockholders' Equity (Deficit)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shares</td>
<td>Amount</td>
<td>Shares</td>
<td>Amount</td>
<td>Shares</td>
<td>Amount</td>
<td>Shares</td>
</tr>
<tr>
<td>--------------------------</td>
<td>----------------------------------------</td>
<td>--------------</td>
<td>---------------------------</td>
<td>----------------------------------------</td>
<td>----------------------------------------</td>
<td>-------------------------------------</td>
</tr>
<tr>
<td>Balance at December 31, 2011</td>
<td>73,569,352</td>
<td>$23,425</td>
<td>24,480,000</td>
<td>$3</td>
<td>67</td>
<td>—</td>
</tr>
<tr>
<td>Issuance of common stock upon exercise of stock options</td>
<td>—</td>
<td>—</td>
<td>91,166</td>
<td>—</td>
<td>4</td>
<td>—</td>
</tr>
<tr>
<td>Stock-based compensation expense</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>132</td>
<td>—</td>
</tr>
<tr>
<td>Net loss</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Balance at December 31, 2012</td>
<td>73,569,352</td>
<td>23,425</td>
<td>24,571,166</td>
<td>3</td>
<td>203</td>
<td>—</td>
</tr>
<tr>
<td>Issuance of Series D redeemable convertible preferred stock for cash, net of issuance costs</td>
<td>19,433,258</td>
<td>42,811</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Issuance of common stock upon exercise of stock options</td>
<td>—</td>
<td>—</td>
<td>2,188,940</td>
<td>—</td>
<td>205</td>
<td>—</td>
</tr>
<tr>
<td>Stock-based compensation expense</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>620</td>
<td>—</td>
</tr>
<tr>
<td>Excess tax benefit from stock-based compensation</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>38</td>
<td>—</td>
</tr>
<tr>
<td>Net loss</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Balance at December 31, 2013</td>
<td>93,002,610</td>
<td>66,236</td>
<td>26,760,106</td>
<td>3</td>
<td>1,066</td>
<td>—</td>
</tr>
<tr>
<td>Issuance of redeemable convertible preferred stock upon exercise of redeemable convertible preferred stock warrants</td>
<td>231,712</td>
<td>1,578</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Issuance of common stock upon exercise of stock options</td>
<td>—</td>
<td>—</td>
<td>490,285</td>
<td>—</td>
<td>97</td>
<td>—</td>
</tr>
<tr>
<td>Stock-based compensation expense</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>6,804</td>
<td>—</td>
</tr>
<tr>
<td>Excess tax benefit from stock-based compensation</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>13</td>
<td>—</td>
</tr>
<tr>
<td>Net income</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Other comprehensive income</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>37</td>
<td>—</td>
</tr>
<tr>
<td>Balance at December 31, 2014</td>
<td>93,234,322</td>
<td>67,814</td>
<td>27,250,391</td>
<td>3</td>
<td>7,980</td>
<td>37</td>
</tr>
</tbody>
</table>
### FITBIT, INC.

#### Consolidated Statements of Redeemable Convertible Preferred Stock and Stockholders’ Equity (Deficit) (Continued)

*(In thousands except share amounts)*

<table>
<thead>
<tr>
<th>Redeemable Convertible Preferred Stock</th>
<th>Common Stock</th>
<th>Additional Paid-In Capital</th>
<th>Accumulated Other Comprehensive Income</th>
<th>Retained Earnings (Accumulated Deficit)</th>
<th>Total Stockholders’ Equity (Deficit)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shares</td>
<td>Amount</td>
<td>Shares</td>
<td>Amount</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance of common stock upon exercise of stock options (unaudited)</td>
<td>—</td>
<td>—</td>
<td>112,101</td>
<td>—</td>
<td>70</td>
</tr>
<tr>
<td>Issuance of common stock in connection with acquisition (unaudited)</td>
<td>—</td>
<td>—</td>
<td>706,471</td>
<td>—</td>
<td>13,630</td>
</tr>
<tr>
<td>Issuance of common stock subject to vesting in connection with acquisition (unaudited)</td>
<td>—</td>
<td>—</td>
<td>205,478</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Stock-based compensation expense (unaudited)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>4,903</td>
</tr>
<tr>
<td>Net income (unaudited)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Other comprehensive income (unaudited)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Balance at March 31, 2015 (unaudited)</td>
<td>93,234,322</td>
<td>$67,814</td>
<td>28,274,441</td>
<td>$3</td>
<td>$26,583</td>
</tr>
</tbody>
</table>

*The accompanying notes are an integral part of these consolidated financial statements.*

F-7
## FITBIT, INC.

### Consolidated Statements of Cash Flows

*(In thousands)*

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2012</td>
</tr>
<tr>
<td><strong>Cash Flows from Operating Activities</strong></td>
<td></td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$4,216</td>
</tr>
<tr>
<td>Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:</td>
<td></td>
</tr>
<tr>
<td>Provision for doubtful accounts</td>
<td>71</td>
</tr>
<tr>
<td>Provision for inventory obsolescence</td>
<td>400</td>
</tr>
<tr>
<td>Provision for inventory obsolescence related to Fitbit Force recall</td>
<td>19</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>1,179</td>
</tr>
<tr>
<td>Amortization of intangible assets</td>
<td></td>
</tr>
<tr>
<td>Write-off of property and equipment</td>
<td>—</td>
</tr>
<tr>
<td>Write-off of property and equipment included in accounts payable</td>
<td>—</td>
</tr>
<tr>
<td>Revaluation of redeemable convertible preferred stock warrant liability</td>
<td>37</td>
</tr>
<tr>
<td>Amortization of issuance costs and discount on debt</td>
<td>24</td>
</tr>
<tr>
<td>Stock-based compensation</td>
<td>132</td>
</tr>
<tr>
<td>Deferred income taxes</td>
<td></td>
</tr>
<tr>
<td>Contingent consideration related to acquisitions</td>
<td>—</td>
</tr>
<tr>
<td><strong>Net cash provided by (used in) operating activities</strong></td>
<td>$(4,216)</td>
</tr>
</tbody>
</table>

| **Changes in operating assets and liabilities:** |       |       |       |       |       |
| Accounts receivable | (20,131) | (55,630) | (158,788) | 31,004 | 77,371 |
| Inventories | (9,369) | (47,376) | (61,595) | 2,633 | (24,198) |
| Prepaid expenses and other assets | (846) | (2,225) | (9,679) | (2,457) | (8,220) |
| Fitbit Force recall reserve | — | 72,687 | (60,462) | 1,300 | (7,371) |
| Accounts payable | 14,340 | 50,881 | 123,761 | (39,616) | (59,478) |
| Accrued liabilities and other liabilities | 7,882 | 27,043 | 47,733 | (6,340) | (4,826) |
| Deferred revenue | 3,529 | 859 | 3,403 | 150 | 7,467 |
| Income taxes payable | 84 | 17,795 | 12,804 | (8,300) | (12,909) |
| **Net cash provided by (used in) operating activities** | $(6,884) | 33,171 | 18,774 | (9,483) | 32,660 |

| **Cash Flows from Investing Activities** |       |       |       |       |       |
| Change in restricted cash | — | (2,310) | 2,310 | 2,310 | — |
| Purchase of property and equipment | (2,505) | (7,524) | (26,495) | (2,909) | (5,009) |
| Acquisitions, net of cash acquired | — | — | — | — | (11,037) |
| **Net cash used in investing activities** | (2,505) | (9,834) | (24,185) | (599) | (16,046) |

| **Cash Flows from Financing Activities** |       |       |       |       |       |
| Proceeds from issuance of debt and revolving credit facility, net debt discount | 7,872 | 2,830 | 163,000 | 30,000 | 160,000 |
| Repayment of debt | (58) | (596) | (41,346) | (2,347) | (134,503) |
| Payment of issuance costs | (69) | (45) | (2,575) | (604) | — |
| Payments of deferred offering costs | — | — | — | — | (1) |
| Proceeds from issuance of redeemable convertible preferred stock, net of issuance costs | — | 42,811 | — | — | — |
| Proceeds from exercise of stock options | 4 | 205 | 97 | 3 | 70 |
| Excess of tax benefit from stock-based compensation | — | 38 | 13 | — | — |
| Proceeds from exercise of redeemable convertible preferred stock warrants | — | — | — | — | 75 |
| **Net cash provided by financing activities** | 7,749 | 45,243 | 119,264 | 27,052 | 25,566 |

| Net increase (decrease) in cash and cash equivalents | (1,640) | 68,580 | 113,853 | 16,970 | 42,180 |
| Effect of exchange rate on cash and cash equivalents | — | — | 45 | 5 | 43 |
| Cash and cash equivalents at beginning of period | 14,788 | 13,145 | 81,728 | 81,728 | 195,626 |
| Cash and cash equivalents at end of period | $13,148 | $81,728 | $195,626 | $98,702 | $237,349 |

### Supplemental Disclosure

| Cash paid for interest | $87 | $999 | $835 | $164 | $84 |
| Cash paid for income taxes | $2 | $12,930 | $34,616 | $13,592 | $44,045 |

### Supplemental Disclosure of Non-Cash Investing and Financing Activity

| Purchase of property and equipment included in accounts payable | $121 | $1,904 | $2,492 | $421 | $2,968 |
| Issuance of redeemable convertible preferred stock warrants in connection with debt financing | $410 | $130 | — | — | — |
| Deferred offering costs included in accounts payable and accruals | — | — | — | — | 2,501 |
| Issuance of common stock in connection with acquisitions | $ — | $ — | — | — | $13,609 |
| Contingent consideration related to acquisitions | — | — | — | — | 7,704 |

The accompanying notes are an integral part of these consolidated financial statements.

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1. Business Overview

Fitbit, Inc. (the “Company”) is transforming the way millions of people around the world achieve their health and fitness goals. The Fitbit platform combines connected health and fitness devices with software and services, including an online dashboard and mobile apps, data analytics, motivational and social tools, personalized insights, and virtual coaching through customized fitness plans and interactive workouts. The Company sells devices through diversified sales channels that include distributors, retailers, a corporate wellness offering, and Fitbit.com. The Company was incorporated in Delaware in 2007. The Company has established wholly-owned subsidiaries globally and its corporate headquarters are located in San Francisco, California.

2. Basis of Presentation

Principles of Consolidation

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

Stock Splits

In June 2013, the Company effected a 4-for-1 stock split of all outstanding shares of redeemable convertible preferred stock. In addition, in September 2014, the Company effected a 2-for-1 stock split of all outstanding shares of the Company’s capital stock, including common stock and redeemable convertible preferred stock. All shares, stock options, share, and per share information presented in the consolidated financial statements have been adjusted to reflect the stock splits on a retroactive basis for all periods presented and all share information is rounded down to the nearest whole share after reflecting the stock splits.

Use of Estimates

The preparation of consolidated financial statements in accordance with generally accepted accounting principles in the United States of America (“U.S. GAAP”) requires management to make estimates and assumptions that affect the amounts reported and disclosed in the consolidated financial statements and accompanying notes. The estimates and assumptions made by management related to revenue recognition, accruals for the Fitbit Force recall, reserves for sales returns and incentives, reserves for warranty, valuation of stock options, fair value of warrant liability and derivative assets and liabilities, allowance for doubtful accounts, inventory valuation, and the valuations of deferred income tax assets and uncertain tax positions. Actual results could differ from those estimates, and such differences may be material to the consolidated financial statements.

Changes to Previously Issued Financial Statements

The Company has reclassified certain amounts from its previously issued consolidated financial statements to conform to the presentation for 2014. Specifically, the Company revised its presentation of its sales returns reserve, except for estimated returns for the Fitbit Force product recall, previously included in accrued liabilities, which is now presented as a reduction to accounts receivable. Accordingly, the accounts receivable and accrued liabilities decreased by $15.4 million on the consolidated balance sheet as of December 31, 2013. Additionally, the Company decreased both accounts receivable and deferred revenue by $16.8 million as of December 31, 2013 for amounts billed and in transit for which legal transfer of title had not yet occurred. These changes had no impact on the consolidated statements of operations or consolidated statements of cash flows.

The Company had certain immaterial reclassifications within the consolidated statements of cash flows to conform to the current year presentation. These reclassifications had no impact on the net change in cash and cash equivalents within the consolidated statements of cash flows.
During the preparation of the consolidated financial statements as of and for the year ended December 31, 2014, the Company identified errors within the Company’s consolidated statements of cash flows for the years ended December 31, 2012 and 2013, which financial statements were revised to correct the errors. The Company revised the consolidated statement of cash flows for the year ended December 31, 2012 to decrease both net cash used in operating activities and net cash provided by financing activities by $0.4 million and for the year ended December 31, 2013 to increase net cash provided by operating activities and decrease net cash provided by financing activities by $0.2 million. The Company evaluated the errors and concluded that they were not material to the 2012 and 2013 financial statements.

During the preparation of the consolidated financial statements as of and for the quarter ended March 31, 2015, the Company identified an error within the consolidated statement of cash flows for the year ended December 31, 2014. The Company revised the consolidated statement of cash flows for the year ended December 31, 2014 to correct an immaterial error in classification related to accruals for capital expenditure items. The revision increased both net cash provided by operating activities and net cash used in investing activities by $1.9 million. This had no impact on the net change in cash and cash equivalents within the consolidated statements of cash flows. The Company evaluated the error and concluded that it was not material to the 2014 financial statements.

Unaudited Pro Forma Balance Sheet Information

The unaudited pro forma information as of March 31, 2015 presents the Company’s stockholders’ equity as though all of the Company’s redeemable convertible preferred stock outstanding had automatically converted into shares of common stock upon the completion of a qualifying initial public offering (“IPO”) of the Company’s common stock. In addition, the pro forma stockholders’ equity assumes the reclassification of the redeemable convertible preferred stock warrant liability to additional paid-in capital upon a qualifying IPO of the Company’s common stock, assuming the redeemable convertible preferred stock warrants automatically become common stock warrants that are classified as equity and are not subject to remeasurement. The shares of common stock issuable and the proceeds expected to be received by the Company upon the completion of a qualifying IPO are excluded from such pro forma financial information.

Unaudited Pro Forma Net Income per Share Attributable to Common Stockholders

The unaudited pro forma basic and diluted net income per share attributable to common stockholders, which has been computed to give effect to the assumed automatic conversion of the redeemable convertible preferred stock into shares of common stock using the if converted method upon the completion of a qualifying IPO and the elimination of the revaluation adjustment on the redeemable convertible preferred stock warrants due to the automatic conversion of those warrants into common stock warrants (not subject to revaluation) as though the conversion had occurred as of the beginning of the period.

Comprehensive Income (Loss)

Comprehensive income (loss) consists of two components, net income (loss) and other comprehensive income, net of tax. Other comprehensive income refers to revenue, expenses, and gains and losses that are recorded as an element of stockholders’ equity but are excluded from net income (loss). The Company’s other comprehensive income consists of foreign currency translation adjustments from those subsidiaries not using the U.S. dollar as their functional currency.

Unaudited Interim Consolidated Financial Statements

The accompanying interim consolidated balance sheet as of March 31, 2015, the interim consolidated statements of operations, comprehensive income (loss), and cash flows for the three months ended March 31,
2014 and 2015, and the interim consolidated statement of redeemable convertible preferred stock and stockholders’ equity (deficit) for the three months ended March 31, 2015 are unaudited. The unaudited interim financial statements have been prepared on the same basis as the audited consolidated financial statements, and in management’s opinion, includes all adjustments, consisting of only normal recurring adjustments, necessary for the fair statement of the Company’s financial position as of March 31, 2015 and its results of operations and cash flows for the three months ended March 31, 2014 and 2015. The financial data and the other financial information disclosed in the notes to these consolidated financial statements related to the three-month periods are also unaudited. The results of operations for the three months ended March 31, 2015 are not necessarily indicative of the results to be expected for the full fiscal year or any other period.

3. Significant Accounting Policies

   Cash and Cash Equivalents
   Cash and cash equivalents include all cash balances and highly liquid investments with original maturities of three months or less from the date of purchase. As of December 31, 2013 and 2014, cash and cash equivalents consisted of cash in bank deposits and money market accounts held at financial institutions.

   Restricted Cash
   In 2013, the Company entered into a facility lease and a sublease under which the Company is required to maintain letters of credit, with the landlord named as the beneficiary. The letters of credit required a certain amount of cash to be kept in a separate account as collateral. The $2.3 million of restricted cash has been excluded from the Company’s cash and cash equivalents and is classified as restricted cash on the accompanying consolidated balance sheet as of December 31, 2013. The restricted cash related to the lease agreements was released during 2014 and was no longer restricted.

   Fair Value of Financial Instruments
   Assets and liabilities recorded at fair value on a recurring basis are categorized based upon the level of judgment associated with inputs used to measure their fair values. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the reporting date.

   The Company estimates fair value 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; and
   Level 3 —Inputs that are generally unobservable and typically reflect management’s estimate of assumptions that market participants would use in pricing the asset or liability.

   Foreign Currencies
   The Company and certain of the Company’s wholly-owned subsidiaries use the U.S. dollar as their functional currency. The Company’s subsidiaries that use the U.S. dollar as their functional currency remeasure local currency denominated monetary assets and liabilities at exchange rates in effect at the end of each period,
and inventories, property, plant and equipment and other nonmonetary assets and liabilities at historical rates. Gains and losses from these remeasurements have been included in the Company’s operating results. Local currency transactions of these international operations are remeasured into U.S. dollars at the rates of exchange in effect at the date of the transaction.

The Company translates the assets and liabilities of its non-U.S. dollar functional currency subsidiaries into U.S. dollars using exchange rates in effect at the end of each period. Revenue and expenses for these subsidiaries are translated using rates that approximate those in effect during the related period. Gains and losses from translations are recognized in foreign currency translation included in accumulated other comprehensive income (loss).

Foreign currency transaction gains and losses are recognized in other income (expense), net and were comprised of net losses of $0.2 million, $2.7 million, and $2.7 million for 2013, 2014, and the three months ended March 31, 2015, respectively. Foreign currency transaction gains and losses were a net gain of $0.1 million for the three months ended March 31, 2014. Foreign currency transaction gains and losses were insignificant for 2012.

**Derivative Instruments**

The Company accounts for its derivative instruments as either assets or liabilities and carries them at fair value. The derivatives held by the Company are not designated as hedges and are adjusted to fair value through earnings at each reporting date. The fair value of derivative assets and liabilities are included in prepaid expenses and other current assets and accrued liabilities on the consolidated balance sheets.

**Concentration of Credit Risk**

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash, cash equivalents, accounts receivables, and derivative instruments. Cash and cash equivalents are deposited with high quality financial institutions and may, at times, exceed federally insured limits. Management believes that the financial institutions that hold the Company’s deposits are financially credit worthy and, accordingly, minimal credit risk exists with respect to those balances. Generally, these deposits may be redeemed upon demand and, therefore, bear minimal interest rate risk.

The Company’s accounts receivable are derived from customers located principally in the United States. The Company maintains credit insurance for some of its customer balances, performs ongoing credit evaluations of its customers, and maintains allowances for potential credit losses on customers’ accounts when deemed necessary. Credit losses historically have not been significant. The Company continuously monitors customer payments and maintains an allowance for doubtful accounts based on its assessment of various factors including historical experience, age of the receivable balances, and other current economic conditions or other factors that may affect customers’ ability to pay.

The Company’s derivative instruments expose it to credit risk to the extent that its counterparties may be unable to meet the terms of the agreements. The Company seeks to mitigate this risk by limiting counterparties to major financial institutions and by spreading the risk across several major financial institutions. In addition, the potential risk of loss with any one counterparty resulting from this type of credit risk is monitored on an ongoing basis.
Supplier Concentration

The Company relies on third parties for the supply and manufacture of its products, as well as third-party logistics providers. In instances where these parties fail to perform their obligations, the Company may be unable to find alternative suppliers or satisfactorily deliver its products to its customers on time, if at all.

Inventories

Inventories consist of finished goods and component parts, which are purchased from contract manufacturers and component suppliers. Inventories are stated at the lower of cost or market on a first-in, first-out basis. The Company assesses the valuation of inventory and periodically writes down the value for estimated excess and obsolete inventory based upon estimates of future demand and market conditions.

Point of Purchase (“POP”) Displays

The Company provides retailers with POP displays, generally free of charge, in order to facilitate the marketing of the Company’s products within retail stores. Any amounts capitalized related to the costs of the POP displays are recorded as prepaid expense on the consolidated balance sheets and recognized as expense over the expected period of the benefit provided by these assets, which is generally 12 months. The related expenses are included in sales and marketing expenses on the consolidated statements of operations and were $0.1 million, $0.4 million, $5.2 million, $0.2 million, and $4.6 million, for 2012, 2013, and 2014, and the three months ended March 31, 2014 and March 31, 2015, respectively.

Property and Equipment, Net

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization of property and equipment is calculated using the straight-line method over the estimated useful lives of the assets. Cost of maintenance and repairs that do not improve or extend the lives of the respective assets are expensed as incurred.

The useful lives of the property and equipment are as follows:

<table>
<thead>
<tr>
<th>Asset Type</th>
<th>Useful Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tooling and manufacturing equipment</td>
<td>One to three years</td>
</tr>
<tr>
<td>Furniture and office equipment</td>
<td>Three years</td>
</tr>
<tr>
<td>Purchased software</td>
<td>Six months to three years</td>
</tr>
<tr>
<td>Capitalized internally-developed software</td>
<td>Two to three years</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>Shorter of remaining lease term or estimated useful life</td>
</tr>
</tbody>
</table>

Internally-Developed Software Costs

The Company capitalizes costs to develop internal-use software when preliminary development efforts are successfully completed, management has authorized and committed project funding, and it is probable that the project will be completed and the software will be used as intended. Costs incurred prior to meeting these criteria, together with costs incurred for training and maintenance, are expensed as incurred. Costs incurred for enhancements that are expected to result in additional material functionality are capitalized and expensed over the estimated useful life of the upgrades.

Capitalized internally-developed software costs, net, were $0.4 million as of December 31, 2014. The Company did not have any internally-developed software prior to 2014. Amortization expense related to capitalized internally-developed software costs was $0.1 million and $33,000 for 2014 and the three months ended March 31, 2015, respectively.
**Research and Development**

Research and development expenses consist primarily of personnel-related expenses, consulting and contractor expenses, tooling and prototype materials, and allocated overhead costs. Substantially all of the Company’s research and development expenses are related to developing new products and services and improving existing products and services. To date, research and development expenses have been expensed as incurred, because the period between achieving technological feasibility and the release of products and services for sale has been short and development costs qualifying for capitalization have been insignificant.

**Business Combinations, Goodwill, and Intangible Assets**

The Company allocates the fair value of purchase consideration to tangible assets, liabilities assumed, and intangible assets acquired based on their estimated fair values. The excess of the fair value of purchase consideration over the fair values of these identifiable assets and liabilities is allocated to goodwill. The allocation of the purchase consideration requires management to make significant estimates and assumptions, especially with respect to intangible assets. These estimates can include, but are not limited to, future expected cash flows from acquired customers, acquired technology, and trade names from a market participant perspective, useful lives, and discount rates. Management’s estimates of fair value are based upon assumptions believed to be reasonable, but which are inherently uncertain and unpredictable and, as a result, actual results may differ from estimates. During the measurement period, which is up to one year from the acquisition date, the Company may record adjustments to the assets acquired and liabilities assumed, with the corresponding offset to goodwill. Upon the conclusion of the measurement period, any subsequent adjustments are recorded to earnings.

The Company assesses goodwill for impairment at least annually and whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. Consistent with the determination that the Company has one reporting segment, the Company has determined that there is one reporting unit and tests goodwill for impairment at the entity level. Goodwill is tested using the two-step process in accordance with ASC 350, *Intangibles—Goodwill and Other*. In the first step, the carrying amount of the reporting unit is compared to the fair value based on the fair value of the Company’s common stock. If the fair value of the reporting unit exceeds the carrying value, goodwill is not considered impaired and no further testing is required. If the carrying value of the reporting unit exceeds the fair value, goodwill is potentially impaired and the second step of the impairment test must be performed. In the second step, the implied fair value of the goodwill, as defined by ASC 350, is compared to its carrying amount to determine the amount of impairment loss, if any.

Acquired finite-lived intangible assets are amortized over their estimated useful lives. The Company evaluates the recoverability of 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 property and equipment and intangible assets is not recoverable, the carrying amount of such assets is reduced to fair value. The Company has not recorded any such impairment charge during the years presented.

**Impairment of Long-Lived Assets**

The Company evaluates its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability is measured by comparison of the carrying amounts to the expected future undiscounted cash flows attributable to these assets. If it is determined that an asset is not recoverable, an impairment loss is recorded in the amount by which the carrying amount of the assets exceeds the expected discounted future cash flows arising from those assets.
Deferred Rent
Rent expense is recognized on a straight-line basis over the non-cancelable term of the operating lease. The Company records the difference between cash rent payments and recognized rent expense as a deferred rent liability included in accrued liabilities and other liabilities on the consolidated balance sheets. Incentives granted under the Company’s facility leases, including allowances to fund leasehold improvements, are deferred and are recognized as adjustments to rental expense on a straight-line basis over the term of the lease.

 Redeemable Convertible Preferred Stock Warrant Liability
The Company’s redeemable convertible preferred stock warrants require liability classification and accounting as the underlying preferred stock is considered redeemable as discussed in Note 9. At initial recognition, the warrants are recorded at their estimated fair value. The warrants are subject to remeasurement at each balance sheet date, with changes in fair value recognized as a component of other income (expense), net. The Company will continue to adjust the warranty liability for changes in fair value until the earlier of the expiration or exercise of the warrants, or upon their automatic conversion into warrants to purchase common stock in connection with a qualified IPO such that they qualify for equity classification and no further remeasurement is required.

Revenue Recognition
The Company derives substantially all of its revenue from sales of connected health and fitness devices and accessories. The Company also generates a small portion of revenue from its subscription-based premium services. The Company recognizes revenue when persuasive evidence of an arrangement exists, delivery has occurred, the sales price is fixed or determinable, and collection is reasonably assured. The Company considers delivery of its products to have occurred once title and risk of loss has been transferred. The Company recognizes revenue, net of estimated sales returns, sales incentives, discounts, and sales tax. The Company generally recognizes revenue for products sold through retailers and distributors on a sell-in basis.

The Company has determined its multiple element arrangements generally include three separate units of accounting. The first deliverable is the hardware and firmware essential to the functionality of the connected health and fitness device delivered at the time of sale. The second deliverable is the software services included with the products, which are provided free of charge and enable users to sync, view, and access real-time data on the Company's online dashboard and mobile apps. The third deliverable is the embedded right included with the purchase of the device to receive, on a when-and-if-available basis, future unspecified firmware upgrades and features relating to the product’s essential firmware. Commencing in the first quarter of 2015, the Company began accounting for the embedded right as a separate unit of accounting, when it believes, through recent public announcements, it had created an implied obligation to, from time to time, provide future unspecified firmware upgrades and features to the firmware to improve and add new functionality to the health and fitness devices.

The Company allocates revenue to all deliverables based on their relative selling prices. The Company uses a hierarchy to determine the selling price to be used for allocating revenue to deliverables: (i) vendor-specific objective evidence (“VSOE”) of fair value, (ii) third-party evidence (“TPE”), and (iii) best estimate of the selling price (“BESP”). The Company currently cannot establish VSOE for any of its deliverables since none of the deliverables are sold separately. The Company’s process for determining its BESP considers multiple factors including consumer behaviors and the Company's internal pricing model and may vary depending upon the facts and circumstances related to each deliverable. BESP for the health and fitness devices and unspecified upgrade rights reflect the Company’s best estimate of the selling prices if they were sold regularly on a stand-alone basis and comprises the majority of the arrangement consideration. BESP for upgrade rights currently ranges from $1 to $5. TPE for the online dashboard and mobile apps is currently estimated at $0.99.
Amounts allocated to the connected health and fitness devices are recognized at the time of delivery, provided the other conditions for revenue recognition have been met. Amounts allocated to the online dashboard and mobile apps and unspecified upgrade rights are deferred and recognized on a straight-line basis over their estimated usage period.

The Company offers its users the ability to purchase subscription-based premium services, through which the users receive incremental features, including access to a digital personal trainer and in-depth analytics regarding the user’s personal metrics. Amounts paid for premium subscriptions are deferred and recognized ratably over the service period which is typically 12 months. Revenue from subscription-based premium services was less than 1% of revenue for all periods presented.

In addition, the Company offers access to a customized corporate dashboard tool to certain customers in the corporate wellness program. This tool is currently being offered at no cost for the first year. The Company is currently unable to establish VSOE or TPE for the corporate dashboard tool. Current BESP of $20,000 for the corporate dashboard is determined based on the Company’s internal pricing model for anticipated renewals for existing customers and pricing for new customers. Revenue allocated to the corporate dashboard tool is deferred and recognized on a straight-line basis over the estimated access period of 12 months. Revenue from the corporate dashboard tool was less than 1% of revenue for all periods presented.

The Company accounts for shipping and handling fees billed to customers as revenue. Sales taxes and value added taxes (“VAT”) collected from customers are remitted to governmental authorities are not included in revenue, and are reflected as a liability on the consolidated balance sheets.

Rights of Return, Stock Rotation Rights, and Price Protection
The Company offers limited rights of return, stock rotation rights, and price protection under various policies and programs with its retailer and distributor customers and end-users. Below is a summary of the general provisions of such policies and programs:

- Certain retailers and distributors are allowed to return products that were originally sold through to an end user, called “open box” returns, and such returns may be made at any time after original sale.
- All purchases through Fitbit.com are covered by a 45-day right of return.
- Distributors are allowed stock rotation rights which are limited rights of return of products purchased during a prior period, generally one quarter.
- Distributors and retailers are allowed return rights for defective products.
- Certain distributors are offered price protection that allows for the right to a partial credit for unsold inventory held by the distributor if the Company reduces the selling price of a product.

The Company meets all conditions required to recognize revenue at the time of sale when a right of return exists. For example, the price to the buyer is fixed or determinable at time of sale; the buyer’s obligation to pay is not contingent on resale of the product; and the Company is able to reasonably estimate the amount of future returns. The Company estimates and records reserves for these policies and programs as a reduction of revenue and accounts receivable. On a quarterly basis, the amount of revenue that is reserved for future returns is calculated based on the Company’s historical trends and data specific to each reporting period. The Company reviews the actual returns evidenced in prior quarters as a percent of related revenue to determine the historical returns rate. It then applies the historical returns rate to the current period revenue as a basis for estimating future returns. Through December 31, 2014, actual returns have primarily been open-box returns. In addition, through December 31, 2014, the Company has had minimal stock rotation or price protection claims. When necessary, the Company also provides a specific reserve for product in the distribution channel in excess of estimated
requirements. This estimate can be affected by the amount of a particular product in the channel, the rate of sell-through, product plans, and other factors. The Company also considers whether there are circumstances which may result in anticipated returns higher than the historical return rate from direct users and records an additional reserve as necessary.

**Sales Incentives**

The Company offers sales incentives through various programs, consisting primarily of cooperative advertising and marketing development fund programs. The Company records advertising and marketing development fund programs with customers as a reduction to revenue unless it receives an identifiable benefit in exchange for credits claimed by the customer and can reasonably estimate the fair value of the identifiable benefit received, in which case the Company records it as a marketing expense. The Company recognizes a liability and reduces revenue for rebates or other incentives based on the estimated amount of rebates or credits that will be claimed by customers.

**Cost of Revenue**

Cost of revenue consists of product costs, including costs of contract manufacturers for production, shipping and handling costs, packaging, warranty replacement costs, fulfillment costs, manufacturing and tooling equipment depreciation, warehousing costs, excess and obsolete inventory write-downs, costs related to the Fitbit Force product recall, and certain allocated costs related to management, facilities, and personnel-related expenses and other expenses associated with supply chain logistics.

**Advertising Costs**

Costs related to advertising and promotions, excluding co-op advertising costs, are expensed to sales and marketing as incurred. Advertising and promotion expenses for 2012, 2013, 2014, and the three months ended March 31, 2014 and 2015 were $3.3 million, $9.5 million, $71.9 million, $3.8 million, and $21.1 million, respectively. Co-op advertising costs are recorded as a reduction to revenue, and for 2012, 2013, 2014, and the three months ended March 31, 2014 and 2015 were $1.9 million, $5.7 million, $12.7 million, $2.1 million, and $6.1 million, respectively.

**Product Warranty**

The Company offers a standard product warranty that the product will operate under normal use for a period of one year from date of original purchase except in the European Union where the Company provides a two-year warranty. The Company has the obligation, at its option, to either repair or replace the defective product.

At the time revenue is recognized, an estimate of future warranty costs is recorded as a component of cost of revenues. Factors that affect the warranty obligation include product failure rates and service delivery costs incurred in correcting the product failures. The warranty obligation does not consider historical experience of the Fitbit Force product as a separate reserve has been established for the Fitbit Force recall. The Company’s products are manufactured by third-party contract manufacturers, and in certain cases, the Company may have recourse to such third-party contract manufacturers.

**Fitbit Force Product Recall**

The Company established reserves for the Fitbit Force recall when circumstances giving rise to the recall became known. It considered various factors in estimating the product recall exposure. These include estimates for:

- refunds and product returns from retailer and distributor customers and end-users, which were charged to revenue and cost of revenue on the consolidated statements of operations;
logistics and handling fees for managing product returns and processing refunds, obsolescence of on-hand inventory, cancellation charges for existing purchase commitments and rework of component inventory by the Company’s contract manufacturers, write-offs of tooling and manufacturing equipment, which were charged to cost of revenue on the consolidated statements of operations; and legal fees and settlement costs, which were charged to general and administrative expenses on the consolidated statements of operations.

These factors above are updated and reevaluated each period and the related reserves are adjusted when factors indicate that the recall reserves are either insufficient to cover or exceed the estimated product recall expenses.

**Stock-Based Compensation**

The Company measures its stock-based awards made to employees based on the estimated fair values of the awards as of the grant date using the Black-Scholes option-pricing model. The fair value of restricted stock units (“RSUs”) is the fair value of the Company’s common stock on the grant date. Stock-based compensation expense is recognized over the requisite service period on a straight-line basis and is recorded net of estimated forfeitures.

Stock-based compensation expenses for options granted to non-employees as consideration for services received are measured on the date of performance at the fair value of the consideration received or the fair value of the equity instruments issued, using the Black-Scholes option-pricing model, whichever can be more reliably measured. Stock-based compensation expenses for options granted to non-employees are remeasured as the underlying options vest.

The Company recognizes tax benefits related to stock-based compensation to the extent that the total reduction to its income tax liability from stock-based compensation is greater than the amount of the deferred tax assets previously recorded in anticipation of these benefits. The Company recognizes a benefit from stock-based compensation in equity to the extent that an incremental tax benefit is realized by following the ordering provisions of the tax laws.

**Segment Information**

The Company operates as one operating segment as it only reports financial information on an aggregate and consolidated basis to its Chief Executive Officer, who is the Company’s chief operating decision maker.

**Income Taxes**

The Company utilizes the asset and liability method of accounting for income taxes, which requires the recognition of deferred tax assets and liabilities for expected future consequences of temporary differences between the financial reporting and income tax bases of assets and liabilities using enacted tax rates. The Company makes estimates, assumptions, and judgments to determine its expense (benefit) for income taxes and also for deferred tax assets and liabilities and any valuation allowances recorded against its deferred tax assets. The Company assesses the likelihood that its deferred tax assets will be recovered from future taxable income and, to the extent it believes that recovery is not likely, the Company establishes a valuation allowance.

The calculation of the Company’s income tax expense involves the use of estimates, assumptions, and judgments while taking into account current tax laws, its interpretation of current tax laws, and possible outcomes of future tax audits. The Company has established reserves to address potential exposures related to tax positions that could be challenged by tax authorities. Although the Company believes its estimates, assumptions, and judgments to be reasonable, any changes in tax law or its interpretation of tax laws and the resolutions of
potential tax audits could significantly impact the amounts provided for income taxes in its consolidated financial statements.

The calculation of the Company’s deferred tax asset balance involves the use of estimates, assumptions, and judgments while taking into account estimates of the amounts and type of future taxable income. Actual future operating results and the underlying amount and type of income could differ materially from the Company’s estimates, assumptions, and judgments, thereby impacting its financial position and operating results.

The Company includes interest and penalties related to unrecognized tax benefits within income tax expense. Interest and penalties related to unrecognized tax benefits have been recognized in the appropriate periods presented.

**Net Income (Loss) per Share Attributable to Common Stockholders**

Basic and diluted net income per share attributable to common stockholders is presented in conformity with the two-class method required for participating securities. The Company considers its redeemable convertible preferred stock to be participating securities. The holders of the Company’s Series D redeemable convertible preferred stock are entitled to receive non-cumulative dividends at the annual rate of approximately 8% of the Series D original issuance price per share per annum, payable prior and in preference to any dividends on any shares of the Company’s other redeemable convertible preferred stock, which is payable prior and in preference to any dividends on any shares of the common stock. In the event a cash dividend is paid on common stock, the holders of redeemable convertible preferred stock are also entitled to a proportionate share of any such dividend as if they were holders of common stock (on an as-if converted basis). All participating dividends paid on the Series D redeemable convertible preferred stock reduce accruals of past or future preferred dividends by such amount. The holders of the redeemable convertible preferred stock do not have a contractual obligation to share in losses. In accordance with the two-class method, earnings allocated to these participating securities and the related number of outstanding shares of the participating securities, which include contractual participation rights in undistributed earnings, have been excluded from the computation of basic and diluted net income per share attributable to common stockholders.

In 2012 and 2013, basic net loss per share attributable to common stockholders is calculated by dividing the net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding during the period without consideration of common stock equivalents or the participation rights of the preferred stock as they do not share in losses. During the periods when the Company is in a net loss position, basic net loss per share attributable to common stockholders is the same as diluted net loss per share attributable to common stockholders as the inclusion of all potential shares of common stock outstanding would have been anti-dilutive.

**Recent Accounting Pronouncements**

In May 2014, the FASB issued ASU 2014-09 (ASC 606), *Revenue from Contracts with Customers*, which affects any entity that either enters into contracts with customers to transfer goods and services or enters into contracts for the transfer of nonfinancial assets. ASU 2014-09 will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective. The standard’s core principle is that a company will recognize revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. In doing so, companies will need to use more judgment and make more estimates than under the currently effective guidance. These may include identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price and allocating the transaction price to each separate performance obligation. ASU 2014-09 is effective for annual periods beginning after December 15, 2016, including interim
periods within that period. Early adoption is not permitted. The FASB recently issued an exposure draft of a proposed ASU that would delay the effective date of ASU 2014-09 by one year and allow for early adoption. The Company is currently evaluating the impact of this guidance on its consolidated financial statements.

4. Fair Value Measurements

The carrying values of the Company’s financial instruments, including cash equivalents, accounts receivable, and accounts payable, approximated their fair values due to the short period of time to maturity or repayment. The carrying values of the Company’s long-term debt approximate their fair values as of December 31, 2013 and 2014, and as of March 31, 2015 as the debt carries a variable rate or market rates currently available to the Company and other assumptions have not changed significantly.

The following tables set forth the Company’s financial instruments that were measured at fair value on a recurring basis by level within the fair value hierarchy (in thousands):

<table>
<thead>
<tr>
<th>March 31, 2015</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Derivative assets</td>
<td>$ —</td>
<td>$ 214</td>
<td>$ —</td>
<td>$ 214</td>
</tr>
<tr>
<td><strong>Liabilities:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Redeemable convertible preferred stock warrant liability</td>
<td>$ —</td>
<td>$ —</td>
<td>$26,132</td>
<td>$26,132</td>
</tr>
<tr>
<td>Contingent consideration</td>
<td>$ —</td>
<td>$ —</td>
<td>7,704</td>
<td>7,704</td>
</tr>
<tr>
<td>Derivative liabilities</td>
<td>$ —</td>
<td>17</td>
<td>$ —</td>
<td>17</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$ —</td>
<td>$ 17</td>
<td>$33,836</td>
<td>$33,853</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>December 31, 2014</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Derivative assets</td>
<td>$ —</td>
<td>$ 316</td>
<td>$ —</td>
<td>$ 316</td>
</tr>
<tr>
<td><strong>Liabilities:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Redeemable convertible preferred stock warrant liability</td>
<td>$ —</td>
<td>$ —</td>
<td>$15,797</td>
<td>$15,797</td>
</tr>
<tr>
<td>Derivative liabilities</td>
<td>$ —</td>
<td>105</td>
<td>$ —</td>
<td>105</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$ —</td>
<td>$ 105</td>
<td>$15,797</td>
<td>$15,902</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>December 31, 2013</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Liabilities:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Redeemable convertible preferred stock warrant liability</td>
<td>$ —</td>
<td>$ —</td>
<td>$ 4,028</td>
<td>$ 4,028</td>
</tr>
</tbody>
</table>

Level 2 assets and liabilities are comprised of derivative financial instruments associated with hedging activity is further discussed in Note 5. Derivative financial instruments are initially measured at fair value on the contract date and are subsequently remeasured to fair value at each reporting date using inputs such as spot rates and forward rates. There is not an active market for each hedge contract, but the inputs used to calculate the value of the instruments are tied to active markets.

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The Company’s Level 3 liabilities measured and recorded on a recurring basis consist of the redeemable convertible preferred stock warrant liability and contingent consideration. The fair value of the warrant liability is calculated using an option-pricing model as discussed in Note 10. Generally, increases or decreases in the fair value of the underlying redeemable convertible preferred stock would result in a directionally similar impact in the fair value measurement of the associated warrant liability. The following table sets forth a summary of the changes in the fair value of the redeemable convertible preferred stock warrant liability (in thousands):

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fair value of redeemable convertible preferred stock warrants issued</td>
<td>$41,000</td>
<td>$170,000</td>
<td>$3,370,000</td>
<td>$13,272,000</td>
</tr>
<tr>
<td>Change in fair value</td>
<td>$37,000</td>
<td>$488,000</td>
<td>$3,402,000</td>
<td>$13,319,000</td>
</tr>
<tr>
<td>Settlement of warrant liability upon exercise</td>
<td></td>
<td></td>
<td>$(1,503,000)</td>
<td>$13,272,000</td>
</tr>
<tr>
<td>Change in fair value</td>
<td></td>
<td></td>
<td></td>
<td>$10,335,000</td>
</tr>
<tr>
<td>Balance at December 31, 2011</td>
<td>$41,000</td>
<td>$488,000</td>
<td>$4,028,000</td>
<td>$15,797,000</td>
</tr>
<tr>
<td>Change in fair value (unaudited)</td>
<td></td>
<td></td>
<td></td>
<td>$10,335,000</td>
</tr>
<tr>
<td>Balance at March 31, 2015 (unaudited)</td>
<td></td>
<td></td>
<td></td>
<td>$26,132,000</td>
</tr>
</tbody>
</table>

The Company’s acquisition-related contingent consideration is determined using the Monte Carlo simulation method. The increases or decreases in the fair value of the contingent consideration payable could result from changes in the anticipated fair value of the Company’s common stock, stock price volatility, and probability of various market-based scenarios. As the fair value measure is based on significant inputs that are not observable in the market, they are categorized as Level 3.

There have been no transfers between fair value measurement levels during 2013 and 2014.

5. **Derivative Financial Instruments**

The Company’s earnings and cash flows are subject to fluctuations due to changes in foreign currency exchange rates. In December 2014, the Company entered into foreign exchange contracts to hedge monetary assets and liabilities that are denominated in currencies other than the functional currency of its subsidiaries. The Company and its subsidiaries do not enter into derivative contracts for speculative purposes.

These foreign exchange contracts are carried at fair value and do not qualify for hedge accounting treatment and are not designated as hedging instruments. Changes in the value of the foreign exchange contracts are recognized in other income (expense), net and offset the foreign currency gain or loss on the underlying net monetary assets or liabilities. The notional amount of foreign currency contracts open in U.S. dollar equivalents was $37.2 million as of December 31, 2014 and $5.7 million as of March 31, 2015.
The table below presents the notional amount of the foreign currency contracts as of March 31, 2015 (unaudited) (in thousands):

<table>
<thead>
<tr>
<th>Functional Currency</th>
<th>Notional Amount Sold</th>
<th>USD Equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>AUD</td>
<td>4,600</td>
<td>$3,673</td>
</tr>
<tr>
<td>GBP</td>
<td>900</td>
<td>1,371</td>
</tr>
<tr>
<td>NZD</td>
<td>950</td>
<td>692</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>5,736</strong></td>
<td><strong>$5,736</strong></td>
</tr>
</tbody>
</table>

The table below presents the notional amount of the foreign currency contracts as of December 31, 2014 (in thousands):

<table>
<thead>
<tr>
<th>Functional Currency</th>
<th>Notional Amount Purchased</th>
<th>USD Equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>AUD</td>
<td>32,700</td>
<td>$26,810</td>
</tr>
<tr>
<td>CAD</td>
<td>3,200</td>
<td>2,782</td>
</tr>
<tr>
<td>EUR</td>
<td>2,700</td>
<td>3,355</td>
</tr>
<tr>
<td>GBP</td>
<td>2,100</td>
<td>3,295</td>
</tr>
<tr>
<td>NZD</td>
<td>1,200</td>
<td>930</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>37,172</strong></td>
<td><strong>$37,172</strong></td>
</tr>
</tbody>
</table>

Currently, the Company does not have master netting agreements with its counterparties for its foreign currency contracts. As of December 31, 2014 and March 31, 2015, the fair value of the derivative assets of $0.3 million and $0.2 million, respectively, were recorded in prepaid expenses and other assets and the fair value of the derivative liability of $0.1 million and $17,000, respectively, were recorded in accrued liabilities on the consolidated balance sheets. The gain recognized in other income (expense), net for non-designated foreign currency forward contracts was $0.2 million and $2.0 million for 2014 and the three months ended March 31, 2015, respectively.

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6. Balance Sheet Components

Accounts Receivable Reserves

Changes in accounts receivable reserves were as follows (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Doubtful Accounts</th>
<th>Revenue Reserve</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at December 31, 2011</td>
<td>$ 30</td>
<td>$ 255</td>
</tr>
<tr>
<td>Increases</td>
<td>71</td>
<td>3,871</td>
</tr>
<tr>
<td>Write-offs/returns taken</td>
<td>(9)</td>
<td>(939)</td>
</tr>
<tr>
<td>Balance at December 31, 2012</td>
<td>92</td>
<td>3,187</td>
</tr>
<tr>
<td>Increases</td>
<td>651</td>
<td>20,307</td>
</tr>
<tr>
<td>Write-offs/returns taken</td>
<td>—</td>
<td>(8,078)</td>
</tr>
<tr>
<td>Balance at December 31, 2013</td>
<td>743</td>
<td>15,416</td>
</tr>
<tr>
<td>Increases</td>
<td>864</td>
<td>42,740</td>
</tr>
<tr>
<td>Write-offs/returns taken</td>
<td>(769)</td>
<td>(31,597)</td>
</tr>
<tr>
<td>Balance at December 31, 2014</td>
<td>838</td>
<td>26,559</td>
</tr>
<tr>
<td>Increases (unaudited)</td>
<td>73</td>
<td>20,493</td>
</tr>
<tr>
<td>Write-offs/returns taken (unaudited)</td>
<td>(59)</td>
<td>(20,690)</td>
</tr>
<tr>
<td>Balance at March 31, 2015 (unaudited)</td>
<td>$ 852</td>
<td>$ 26,362</td>
</tr>
</tbody>
</table>

Inventories

Inventories consisted of the following (in thousands):

<table>
<thead>
<tr>
<th>Components</th>
<th>December 31, 2013</th>
<th>December 31, 2014</th>
<th>March 31, 2015 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Components</td>
<td>$35,551</td>
<td>$53,383</td>
<td>$62,165</td>
</tr>
<tr>
<td>Finished goods</td>
<td>20,890</td>
<td>61,689</td>
<td>75,344</td>
</tr>
<tr>
<td>Total inventories</td>
<td>$56,441</td>
<td>$115,072</td>
<td>$137,509</td>
</tr>
</tbody>
</table>

Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consisted of the following (in thousands):

<table>
<thead>
<tr>
<th>Prepaid expenses and other current assets</th>
<th>December 31, 2013</th>
<th>December 31, 2014</th>
<th>March 31, 2015 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td>POP displays, net</td>
<td>$1,212</td>
<td>$7,121</td>
<td>$7,721</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>1,973</td>
<td>6,493</td>
<td>14,291</td>
</tr>
<tr>
<td>Total prepaid expenses and other current assets</td>
<td>$3,185</td>
<td>$13,614</td>
<td>$22,012</td>
</tr>
</tbody>
</table>
### Property and Equipment, Net

Property and equipment, net, consisted of the following (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2015</th>
<th>March 31, 2015 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tooling and manufacturing equipment</td>
<td>$9,094</td>
<td>$28,344</td>
</tr>
<tr>
<td>Furniture and office equipment</td>
<td>828</td>
<td>2,891</td>
</tr>
<tr>
<td>Purchased and internally-developed software</td>
<td>482</td>
<td>1,396</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>293</td>
<td>3,594</td>
</tr>
<tr>
<td><strong>Total property and equipment</strong></td>
<td>10,697</td>
<td>36,225</td>
</tr>
<tr>
<td><strong>Less: Accumulated depreciation and amortization</strong></td>
<td>(4,211)</td>
<td>(9,790)</td>
</tr>
<tr>
<td><strong>Property and equipment, net</strong></td>
<td><strong>$6,486</strong></td>
<td><strong>$26,435</strong></td>
</tr>
</tbody>
</table>

### Accrued Liabilities

Accrued liabilities consisted of the following (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2013</th>
<th>December 31, 2014</th>
<th>March 31, 2015 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product warranty</td>
<td>$8,480</td>
<td>$20,098</td>
<td>$23,251</td>
</tr>
<tr>
<td>Accrued manufacturing expense</td>
<td>503</td>
<td>9,953</td>
<td>9,039</td>
</tr>
<tr>
<td>Accrued cooperative advertising and marketing development funds</td>
<td>1,708</td>
<td>7,679</td>
<td>7,852</td>
</tr>
<tr>
<td>Contingent consideration</td>
<td>—</td>
<td>—</td>
<td>7,704</td>
</tr>
<tr>
<td>Customer deposits</td>
<td>836</td>
<td>6,391</td>
<td>3,512</td>
</tr>
<tr>
<td>Inventory received not billed</td>
<td>—</td>
<td>6,242</td>
<td>402</td>
</tr>
<tr>
<td>Employee related liabilities</td>
<td>2,395</td>
<td>4,115</td>
<td>5,351</td>
</tr>
<tr>
<td>Accrued sales incentives</td>
<td>2,469</td>
<td>2,355</td>
<td>1,785</td>
</tr>
<tr>
<td>Sales taxes and VAT payable</td>
<td>1,766</td>
<td>2,291</td>
<td>1,876</td>
</tr>
<tr>
<td>Other</td>
<td>10,911</td>
<td>21,769</td>
<td>13,088</td>
</tr>
<tr>
<td><strong>Accrued liabilities</strong></td>
<td><strong>$28,565</strong></td>
<td><strong>$70,940</strong></td>
<td><strong>$73,860</strong></td>
</tr>
</tbody>
</table>
Product warranty reserve activities were as follows (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Reserve For</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at December 31, 2011</td>
<td>$1,677</td>
</tr>
<tr>
<td>Charged to cost of revenue</td>
<td>3,179</td>
</tr>
<tr>
<td>Settlement of claims</td>
<td>(1,624)</td>
</tr>
<tr>
<td>Balance at December 31, 2012</td>
<td>2,232</td>
</tr>
<tr>
<td>Charged to cost of revenue</td>
<td>9,078</td>
</tr>
<tr>
<td>Settlement of claims</td>
<td>(2,830)</td>
</tr>
<tr>
<td>Balance at December 31, 2013</td>
<td>8,480</td>
</tr>
<tr>
<td>Charged to cost of revenue</td>
<td>19,462</td>
</tr>
<tr>
<td>Settlement of claims</td>
<td>(7,844)</td>
</tr>
<tr>
<td>Balance at December 31, 2014</td>
<td>20,098</td>
</tr>
<tr>
<td>Charged to cost of revenue</td>
<td>7,497</td>
</tr>
<tr>
<td>Settlement of claims (unaudited)</td>
<td>(4,344)</td>
</tr>
<tr>
<td>Balance at March 31, 2015 (unaudited)</td>
<td>$23,251</td>
</tr>
</tbody>
</table>

(1) Does not include reserves established as a result of the recall of the Fitbit Force. See the section titled “—Fitbit Force Recall Reserve” for additional information regarding such reserves.

**Fitbit Force Recall Reserve**

In March 2014, the Company announced a recall for one of its products, the Fitbit Force (“Fitbit Force Recall”). The product recall, which is regulated by the U.S. Consumer Product Safety Commission, covered all Fitbit Force units sold since the product was first introduced in October 2013. The product recall program has no expiration date.

As a result of the product recall, the Company established reserves that include cost estimates for customer refunds, logistics and handling fees for managing product returns and processing refunds, obsolescence of on-hand inventory, cancellation charges for existing purchase commitments and rework of component inventory with the contract manufacturer, write-offs of tooling and manufacturing equipment, and legal settlement costs.
Fitbit Force recall reserve activities were as follows (in thousands):

<table>
<thead>
<tr>
<th>Reserve For</th>
<th>Fitbit Force Recall</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at December 31, 2012</td>
<td>$ —</td>
</tr>
<tr>
<td>Charged to revenue</td>
<td>30,607</td>
</tr>
<tr>
<td>Charged to cost of revenue</td>
<td>49,493</td>
</tr>
<tr>
<td>Charged to general and administrative</td>
<td>2,838</td>
</tr>
<tr>
<td>Settlement of claims</td>
<td>—</td>
</tr>
<tr>
<td>Balance at December 31, 2013</td>
<td>82,938</td>
</tr>
<tr>
<td>Charged to revenue</td>
<td>8,112</td>
</tr>
<tr>
<td>Charged to cost of revenue</td>
<td>11,339</td>
</tr>
<tr>
<td>Charged to general and administrative</td>
<td>505</td>
</tr>
<tr>
<td>Settlement of claims</td>
<td>(80,418)</td>
</tr>
<tr>
<td>Balance at December 31, 2014</td>
<td>22,476</td>
</tr>
<tr>
<td>Benefit to cost of revenue (unaudited)</td>
<td>(2,040)</td>
</tr>
<tr>
<td>Settlement of claims (unaudited)</td>
<td>(5,332)</td>
</tr>
<tr>
<td>Balance at March 31, 2015 (unaudited)</td>
<td>$ 15,104</td>
</tr>
</tbody>
</table>

During 2013, the Company recorded excess and obsolete Fitbit Force inventory-related amounts of $10.3 million, included in the reserve, and wrote-off $1.7 million for specialized Fitbit Force tooling and manufacturing equipment to cost of revenue as incurred in the consolidated statement of operations. During 2014, legal fees of $2.9 million were recognized as incurred, in addition to legal settlement costs of $0.5 million related to the Fitbit Force recall, which were included in general and administrative costs in the consolidated statement of operations. During the three months ended March 31, 2015, a benefit to legal expenses of $0.1 million was recognized as incurred in general and administrative costs.

7. Long-Term Debt

2012 Financing Facility

As of December 31, 2013, the Company had term loan facilities with a financial institution totaling $26.0 million consisting of a $14.0 million revolving line of credit, a $3.0 million senior term loan, and a $9.0 million mezzanine term loan facility. The annual interest rate on the revolving line of credit is the greater of 0.75% above the bank’s prime rate or 4.0%. The annual interest rate on the senior term loan is equal to the greater of 0.50% above the bank’s prime rate or 4.5%. The annual interest rate on the mezzanine term loan facility is equal to 10.5% per annum. For December 31, 2012 and 2013, the effective interest rates on the revolving line of credit and the senior term loan were 4.5% and 4.0% per annum, respectively. The interest on these facilities are payable monthly. The revolving line of credit and the senior term loan advances had original maturity dates ranging from June 2014 to June 2016. The mezzanine term loan had a maturity of May 2016. As of December 31, 2013, $2.3 million was outstanding under the senior term loan, $9.0 million was outstanding under the mezzanine facility, and nothing was outstanding under the revolving line of credit. The revolving line of credit, senior term loan, and mezzanine term loan facility were all terminated in August 2014.

2014 Credit Agreement

In August 2014, the Company entered into an amended and restated credit agreement (“Asset-Based Credit Facility”), with a borrowing limit of $180.0 million. The Asset-Based Credit Facility allows the Company to
borrow up to the lesser of (i) $180.0 million, including up to $50.0 million for the issuance of letters of credit and up to $25.0 million for swing line loans and (ii) the borrowing base then in effect less the amount then outstanding under letters of credit and loans. The borrowing base is determined by the Company’s collateral agents based on several variables, including percentages of the book value of certain eligible accounts receivable and a percentage of certain eligible inventories. Borrowings under the Asset-Based Credit Facility may be drawn as Alternate Base Rate or ABR loans or Eurodollar loans, and matures in August 2018. ABR loans bear interest at a variable rate equal to the applicable margin plus the highest of (i) the prime rate, (ii) the federal funds effective rate plus 0.5%, and (iii) the Eurodollar rate plus 1.0%, but in any case at a minimum rate of 3.25% per annum. Eurodollar loans bear interest at a variable rate based on the LIBOR rate and Euro currency reserve requirements. The Company is also required to pay an annual commitment fee on the average daily unused portion of the facility of 0.25%, 0.35%, or 0.45%, based on usage of the facility. As of December 31, 2014 and March 31, 2015, the effective interest rate on the revolving line of credit was 4.25%.

The Company has the option to repay its borrowings under the Asset-Based Credit Facility without penalty prior to maturity. The Asset-Based Credit Facility requires the Company to comply with certain financial covenants, including maintaining a consolidated fixed charge coverage ratio of at least 1.1:1, consolidated leverage ratios of between 3:1 and 2:1, and levels of liquidity of not less than $15.0 million. The Asset-Based Credit Facility also requires the Company to comply with certain non-financial covenants. The Company was in compliance with these covenants as of December 31, 2014 and March 31, 2015.

As of December 31, 2014, the Company had $125.0 million of outstanding borrowings under the Asset-Based Credit Facility. In January 2015, the Company repaid $125.0 million of its indebtedness under the Asset-Based Credit Facility. As a result, the long-term debt that was repaid was classified as long-term debt, current portion, on the Company’s consolidated balance sheet as of December 31, 2014. As of March 31, 2015, the Company had $160.0 million of outstanding borrowings under the Asset-Based Credit Facility. Subsequent to March 31, 2015, the Company repaid $160.0 million of its indebtedness under the Asset-Based Credit Facility.

**2014 Revolving Credit and Guarantee Agreement**

In August 2014, the Company entered into a revolving credit and guarantee agreement (“Cash Flow Facility”), with multiple lenders. In October 2014, the Company amended the Cash Flow Facility to increase the borrowing limit under the Cash Flow Facility. The Cash Flow Facility allows the Company to borrow up to $50.0 million, including up to $10.0 million for the issuance of letters of credit and up to $10.0 million for swing line loans, and matures in August 2018. Borrowings under the Cash Flow Facility may also be drawn as ABR loans or Eurodollar loans. ABR loans under our Cash Flow Facility bear interest at a variable rate equal to the applicable margin plus the highest of (i) 3.5%, (ii) the prime rate, (iii) the federal funds effective rate plus 0.5%, and (iv) the adjusted LIBOR rate plus 1.0%. Eurodollar loans under the Cash Flow Facility bear interest at a variable rate for any day based on the LIBOR rate and Euro currency reserve requirements. The Company is also required to pay an annual commitment fee on the average daily unused portion of the facility of 0.375% or 0.5%, based on usage of the facility. As of December 31, 2014, the effective interest rate on the revolving line of credit was 3.59%. The Cash Flow Facility also requires the Company to comply with certain financial covenants, including maintaining certain consolidated leverage ratios of between 3:1 and 2:1, and other non-financial covenants.

As of December 31, 2014, the Company had $8.0 million of outstanding borrowings under the Cash Flow Facility. Subsequent to December 31, 2014, the Company repaid $8.0 million of its indebtedness under the Cash Flow Facility. As of March 31, 2015, the Company had no outstanding borrowings under the Cash Flow Facility.
8. Commitments and Contingencies

Leases

The Company’s principal facility is located in San Francisco, California. The Company also leases office space in various locations with expiration dates between 2015 and 2020. The lease agreements often include leasehold improvement incentives, escalating lease payments, renewal provisions and other provisions which require the Company to pay taxes, insurance, maintenance costs or defined rent increases. All of Company’s leases are accounted for as operating leases.

Rent expense is recorded over the lease terms on a straight-line basis. Rent expense was $0.4 million, $0.9 million, $4.1 million, $1.1 million, and $1.1 million, for 2012, 2013, 2014, and the three months ended March 31, 2014 and 2015, respectively. Future minimum payments under the leases as of December 31, 2014 were as follows (in thousands):

<table>
<thead>
<tr>
<th>Year ending December 31,</th>
<th>Amounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>$4,224</td>
</tr>
<tr>
<td>2016</td>
<td>3,848</td>
</tr>
<tr>
<td>2017</td>
<td>3,705</td>
</tr>
<tr>
<td>2018</td>
<td>3,812</td>
</tr>
<tr>
<td>2019</td>
<td>3,725</td>
</tr>
<tr>
<td>Thereafter</td>
<td>874</td>
</tr>
<tr>
<td>Total</td>
<td>$20,188</td>
</tr>
</tbody>
</table>

Future minimum payments under the leases as of March 31, 2015 (unaudited) were as follows (in thousands):

<table>
<thead>
<tr>
<th>Three months ending March 31,</th>
<th>Amounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>$3,998</td>
</tr>
<tr>
<td>2016</td>
<td>5,488</td>
</tr>
<tr>
<td>2017</td>
<td>5,394</td>
</tr>
<tr>
<td>2018</td>
<td>5,551</td>
</tr>
<tr>
<td>2019</td>
<td>4,601</td>
</tr>
<tr>
<td>Thereafter</td>
<td>874</td>
</tr>
<tr>
<td>Total</td>
<td>$25,906</td>
</tr>
</tbody>
</table>

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Purchase Commitments

The aggregate amount of purchase orders open as of December 31, 2014 and March 31, 2015 was approximately $257.0 million and $314.1 million, respectively. The Company cannot determine the aggregate amount of such purchase orders that represent contractual obligations because purchase orders may represent authorizations to purchase rather than binding agreements. The Company’s purchase orders are based on its current needs and are fulfilled by its suppliers, contract manufacturers, and logistics providers within short periods of time.

Legal Proceedings

In 2014, class action and personal injury lawsuits were filed against the Company based upon claims of allergic reactions from adhesives in the Fitbit Force, and alleged violations of various state false advertising and unfair competition statutes based on the Company’s sale and marketing of the Fitbit Force. The class action cases were settled in 2014. Certain personal injury complaints remain outstanding but the Company believes that liabilities arising under these claims are covered by the Company’s commercial general liability insurance.

In addition, from time to time, the Company is involved in legal proceedings in the ordinary course of business. The Company believes that the outcome of any existing legal proceedings, either individually or in the aggregate, will not have a material impact on the operating results, financial condition or cash flows of the Company. With respect to existing legal proceedings, the Company has determined that the existence of a material loss is not reasonably possible.

Indemnifications

In the ordinary course of business, the Company enters into agreements that may include indemnification provisions. Pursuant to such agreements, the Company may indemnify, hold harmless and defend an indemnified parties for losses suffered or incurred by the indemnified party. Some of the provisions will limit losses to those arising from third-party actions. In some cases, the indemnification will continue after the termination of the agreement. The maximum potential amount of future payments the Company could be required to make under these provisions is not determinable. To date, the Company has not incurred material costs to defend lawsuits or settle claims related to these indemnification provisions. The Company has also entered into indemnification agreements with its directors and officers that may require the Company to indemnify its directors and officers against liabilities that may arise by reason of their status or service as directors or officers to the fullest extent permitted by Delaware corporate law. The Company also currently has directors’ and officers’ insurance.

9. Redeemable Convertible Preferred Stock

As of December 31, 2013, the Company’s redeemable convertible preferred stock consisted of the following (in thousands, except share and per share data):

<table>
<thead>
<tr>
<th>Series</th>
<th>Shares Authorized</th>
<th>Shares Outstanding</th>
<th>Price per Share</th>
<th>Net Carrying Value</th>
<th>Liquidation Preference</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>6,800,000</td>
<td>6,800,000</td>
<td>$0.06250</td>
<td>$421</td>
<td>$425</td>
</tr>
<tr>
<td>A-1</td>
<td>14,912,608</td>
<td>14,912,608</td>
<td>0.13747</td>
<td>2,000</td>
<td>2,050</td>
</tr>
<tr>
<td>B</td>
<td>28,240,000</td>
<td>27,803,408</td>
<td>0.32370</td>
<td>8,955</td>
<td>9,000</td>
</tr>
<tr>
<td>C</td>
<td>26,400,000</td>
<td>24,053,336</td>
<td>0.50178</td>
<td>12,049</td>
<td>12,069</td>
</tr>
<tr>
<td>D</td>
<td>20,000,000</td>
<td>19,433,258</td>
<td>2.21270</td>
<td>42,811</td>
<td>43,000</td>
</tr>
</tbody>
</table>

Total 96,352,608 93,002,610 $66,236 $66,544

F-29
As of December 31, 2014 and March 31, 2015 (unaudited), the Company’s redeemable convertible preferred stock consisted of the following (in thousands, except share and per share data):

<table>
<thead>
<tr>
<th>Series</th>
<th>Shares Authorized</th>
<th>Shares Outstanding</th>
<th>Price per Share</th>
<th>Net Carrying Value</th>
<th>Liquidation Preference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Series A</td>
<td>6,800,000</td>
<td>6,800,000</td>
<td>$0.06250</td>
<td>$421</td>
<td>$425</td>
</tr>
<tr>
<td>Series A-1</td>
<td>14,912,608</td>
<td>14,912,608</td>
<td>0.13747</td>
<td>2,000</td>
<td>2,050</td>
</tr>
<tr>
<td>Series B</td>
<td>28,240,000</td>
<td>28,055,120</td>
<td>0.32370</td>
<td>10,533</td>
<td>9,075</td>
</tr>
<tr>
<td>Series C</td>
<td>26,400,000</td>
<td>24,053,336</td>
<td>0.50178</td>
<td>12,049</td>
<td>12,069</td>
</tr>
<tr>
<td>Series D</td>
<td>20,000,000</td>
<td>19,433,258</td>
<td>2.21270</td>
<td>42,811</td>
<td>43,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>96,352,608</strong></td>
<td><strong>93,234,322</strong></td>
<td><strong>$67,814</strong></td>
<td><strong>$66,619</strong></td>
<td></td>
</tr>
</tbody>
</table>

Significant provisions of the redeemable convertible preferred stock are as follows:

**Voting** — Each holder of redeemable convertible preferred stock is entitled to the number of votes equal to the number of shares of common stock into which each such shares of redeemable convertible preferred stock could be converted on the record date for the vote or consent of the stockholders, except as otherwise required by law or other provisions of the Certificate of Incorporation, and have voting rights and powers equal to the voting rights and powers of the common stockholders. The holders of Series A-1, Series B, and Series D redeemable convertible preferred stock, voting as a separate class, are each entitled to elect one member of the board of directors. The holders of redeemable convertible preferred stock and common stock, voting on an as-converted basis, are entitled to elect two members of the Board of Directors.

**Dividends** — The holders of Series D redeemable convertible preferred stock are entitled to receive noncumulative dividends prior and in preference to any payment of any dividend on the holders of other redeemable convertible preferred stock at a rate of 8% of original issuance price per share per annum. The holders of Series A, Series A-1, Series B, and Series C redeemable convertible preferred stock are entitled to receive, on a pari passu basis, non-cumulative dividends, as adjusted for stock splits, dividends, reclassifications or the like, prior and in preference to any declaration or payment of any dividends to the holders of common stock, when and if declared by the Board of Directors, at a rate of 8% of original issuance price per share for redeemable convertible preferred stock, per annum. No cash dividends have been declared by the Board of Directors or paid since inception.

After payment of such preferential dividends on redeemable convertible preferred stock during any year, any further dividends or distribution distributed during such year shall be declared and paid ratably on the outstanding redeemable convertible preferred stock (on an as converted to common stock basis) and the common stock.

**Liquidation** — In the event of any voluntary or involuntary liquidation, the holders of shares of Series D redeemable convertible preferred stock shall be entitled to receive, prior and in preference to any distribution of proceeds, to the holders of Series A, Series A-1, Series B, and Series C redeemable convertible preferred stock and common stock, an amount per share equal to the original issuance price of the Series D redeemable convertible preferred stock plus declared but unpaid dividends on such share. If upon the occurrence of such event, the proceeds thus distributed among the holders of the Series D redeemable convertible preferred stock are insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the proceeds shall be distributed ratably among the holders of Series D redeemable convertible preferred stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive. Upon the completion of the distribution to the holders of Series D redeemable convertible preferred stock shares, the holders of shares of Series A, Series A-1, Series B, and Series C redeemable convertible preferred stock shall be entitled to receive,
prior and in preference to any distribution of the proceeds to the holders of common stock, an amount per share equal to the applicable original issuance price for such series of redeemable convertible preferred stock plus declared but unpaid dividends on such share. If, upon the occurrence of such event, the proceeds thus distributed among the holders of shares of Series A, Series A-1, Series B, and Series C redeemable convertible preferred stock are insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the proceeds shall be distributed ratably among the holders of shares of Series A, Series A-1, Series B, and Series C redeemable convertible preferred stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive. Thereafter, the remaining proceeds, if any, shall be distributed to the holders of shares of Series D redeemable convertible preferred stock and common stock pro rata based on the number of shares of common stock held by each, on an as-converted basis (as if such conversion happened immediately prior to such liquidation event but following the payments described above); provided, however, that if the aggregate amount per share that the holders of Series D redeemable convertible preferred stock shall be entitled to receive shall exceed three times of the Series D original issuance price (the participation cap amount), each holder of Series D redeemable convertible preferred stock shall be entitled to receive upon such liquidation event the greater of (i) the participation cap amount and (ii) the amount such holder would have received if all shares of Series D redeemable convertible preferred stock had been converted into common stock immediately prior to such liquidation event.

A liquidation may be deemed to be occasioned by or to include (unless waived by the vote or written consent of the majority of the outstanding redeemable convertible preferred stock holders, voting as a single class on an as-converted basis, and the holders of at least 66.67% of the then outstanding shares of Series D redeemable convertible preferred stock, voting as a separate series on an as-converted basis) (i) the closing of a sale, transfer, or disposition of all or substantially all of the assets of the Company; (ii) the consummation of a consolidation or merger of the Company with or into another entity (except a consolidation or merger in which the Company’s stockholders immediately prior to such transaction continue to hold at least 50% of the voting power of the capital stock of the Company or the surviving or acquiring entity); or (iii) after the transfer of the Company’s securities to a person or group of affiliated persons, such person or group hold at least 50% of the voting power of the Company (or the surviving or acquiring entity). The Company considers its convertible preferred stock as redeemable and as such has classified it as temporary equity in the balance sheet due to the existence of certain change in control events that are outside of the Company’s control including liquidation, or the sale or transfer of the Company, that trigger the ability of the holders of the redeemable preferred stock to call for redemption of the shares.

Conversion — Each share of Series A, Series A-1, Series B, Series C, and Series D redeemable convertible preferred stock is convertible into such number of shares of common stock as is determined by dividing the original issuance price for such series of redeemable convertible preferred stock by the applicable conversion price for such series of redeemable convertible preferred stock. The initial conversion price per share for each series of redeemable convertible preferred stock is equal to the original issuance price for such series of redeemable convertible preferred stock, which is subject to adjustment. As of December 31, 2014, the conversion price per share equals the original issuance price. Conversion is either at the option of the holder or is automatic upon the closing date of a public offering of the Company’s common stock for which the aggregate public offering price is not less than $70.0 million, or upon the written consent of the holders of a majority of the then outstanding shares of redeemable convertible preferred stock, voting together as a single class on an as-converted basis, and the holders of at least 66.67% of the then outstanding shares of Series D redeemable convertible preferred stock, voting as a separate series on an as-converted to basis.

Protective Provisions — The holders of Series D redeemable convertible preferred stock have certain protective provisions. As long as 8.0 million shares of Series D redeemable convertible preferred stock are outstanding, the Company cannot, without the approval of the holders of at least 66.67% of the then outstanding...
The holders of Series A, Series A-1, Series B, Series C, and Series D redeemable convertible preferred stock have certain protective provisions. As long as at least 54.4 million shares of all series of redeemable convertible preferred stock are outstanding, the Company cannot, without the approval of the holders of at least a majority of the then outstanding shares of redeemable convertible preferred stock, voting as a single class on an as-converted basis, take any action that to: (i) authorize or issue, or obligate itself to issue, any equity security (including any other security convertible into or exercisable for any such equity security) having a preference over any series of redeemable convertible preferred stock with respect to dividends, liquidation or redemption; or (ii) alter or change the rights, preferences or privileges of Series D redeemable convertible preferred stock so as to adversely affect such shares; or (iii) reclassify, alter or amend any existing equity security that is junior or pari passu with the Series D redeemable convertible preferred stock in respect of the distribution of assets on a liquidation event, the repayment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series D redeemable convertible preferred stock in respect of any such right, preference or privilege.

10. Redeemable Convertible Preferred Stock Warrants

As of December 31, 2013 and 2014 and March 31, 2015 (unaudited), the Company had the following redeemable convertible preferred stock warrants issued and outstanding:

<table>
<thead>
<tr>
<th>Warrant Class</th>
<th>Number of Shares Underlying Warrants</th>
<th>March 31, 2015 (unaudited)</th>
<th>Fair Value</th>
<th>March 31, 2015 (unaudited)</th>
<th>Issuance Date</th>
<th>Exercise Price per Share</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2013</td>
<td>2014</td>
<td>2013</td>
<td>2014</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Series B</td>
<td>231,712</td>
<td>—</td>
<td>$712</td>
<td>$ —</td>
<td>August 2009</td>
<td>$0.32</td>
</tr>
<tr>
<td>Series B</td>
<td>185,328</td>
<td>185,328</td>
<td>570</td>
<td>2,351</td>
<td>June 2011</td>
<td>0.32</td>
</tr>
<tr>
<td>Series C</td>
<td>38,000</td>
<td>38,000</td>
<td>110</td>
<td>475</td>
<td>April 2012</td>
<td>0.50</td>
</tr>
<tr>
<td>Series C</td>
<td>810,000</td>
<td>810,000</td>
<td>1,978</td>
<td>9,728</td>
<td>September 2012</td>
<td>1.00</td>
</tr>
<tr>
<td>Series C (1)</td>
<td>270,000</td>
<td>270,000</td>
<td>658</td>
<td>3,243</td>
<td>September 2012</td>
<td>1.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,535,040</strong></td>
<td><strong>1,303,328</strong></td>
<td><strong>4,028</strong></td>
<td><strong>15,797</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(1) Represents additional shares that may be exercised pursuant to the Series C redeemable convertible preferred stock warrant issued in September 2012 due to a draw down on a debt financing arrangement in March 2013.

In August 2009, secured convertible promissory notes were issued to the Company’s founders and investors and subsequently converted to warrants to purchase 231,712 shares of Series B redeemable convertible preferred stock in 2010. The Company determined the fair value of these warrants to be $30,000 on the date of grant. In August 2014, the warrants were exercised into 231,712 shares of Series B redeemable convertible preferred stock for total consideration of $0.1 million.
In June 2011, as part of financing arrangements with a financial institution, the Company issued a warrant to purchase 185,328 shares of Series B redeemable convertible preferred stock. The warrant is immediately exercisable and expires, if not exercised, in June 2018. The Company determined the fair value of the warrants to be $25,000 on the date of grant.

In April and September 2012, in connection with entering into a debt financing arrangement, the Company issued warrants to purchase an aggregate of 848,000 shares of Series C redeemable convertible preferred stock. These warrants are exercisable immediately and expire, if not exercised, in April and September 2019. The Company determined the fair value of the warrants granted in April and September to be $10,000 and $0.4 million on the date of grant.

In March 2013, the Company drew down under an existing debt financing arrangement. In connection with the draw down, the existing September 2012 warrants to purchase 810,000 shares of Series C redeemable convertible preferred stock became exercisable for 1,080,000 shares of Series C redeemable convertible preferred stock. The Company determined the fair value of these warrants to be $0.2 million on the date of grant using the Black-Scholes option-pricing model.

As the redeemable convertible preferred stock warrants are exercisable into contingently redeemable preferred shares, the Company has recognized a liability for the fair value of its warrants on the consolidated balance sheets upon issuance and subsequently remeasures the liability at the end of each reporting period.

The key assumptions used in the Black-Scholes option-pricing model for the revaluation of the redeemable convertible preferred stock warrants were as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31</th>
<th>Year Ended December 31</th>
<th>Three Months Ended March 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2012</td>
<td>2013</td>
<td>2014</td>
</tr>
<tr>
<td>Expected term (in years)</td>
<td>1.6 – 6.75</td>
<td>0.61 – 6.94</td>
<td>0.75 – 1.25</td>
</tr>
<tr>
<td>Volatility</td>
<td>51.83 – 57.22%</td>
<td>31.24 – 62.72%</td>
<td>46.70 – 54.90%</td>
</tr>
<tr>
<td>Risk-free interest rate</td>
<td>0.22% – 1.04%</td>
<td>0.06% – 2.47%</td>
<td>0.11% – 0.21%</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>—%</td>
<td>—%</td>
<td>—%</td>
</tr>
</tbody>
</table>

As these warrants to acquire convertible preferred stock are classified as liabilities, any potential beneficial conversion feature related to those underlying shares of convertible preferred would not be recognized until such time as the warrant is exercised. At that point any excess of the fair value of the Company’s common stock into which the shares of convertible preferred are convertible over the effective conversion price, measured as the sum of the carrying amount of the warrant liability and the exercise price of the warrant, would be recognized as a beneficial conversion feature and would reduce earnings available to common stockholders in the calculation of earnings per share for that period.

In connection with the closing of a qualifying IPO, all of the outstanding redeemable convertible preferred stock warrants will automatically convert to common stock warrants, and the redeemable convertible preferred stock warrant liability will be remeasured to the extent the warrants qualify for equity classification and no further measurement will be required thereafter.
11. Common Stock

The Company has reserved shares of common stock, on an as-converted basis, for future issuance as follows:

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2013</th>
<th>December 31, 2014</th>
<th>March 31, 2015 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Redeemable convertible preferred stock outstanding</td>
<td>93,002,610</td>
<td>93,234,322</td>
<td>93,234,322</td>
</tr>
<tr>
<td>Options issued and outstanding</td>
<td>15,626,602</td>
<td>29,367,735</td>
<td>31,619,974</td>
</tr>
<tr>
<td>Restricted stock units issued and outstanding</td>
<td>—</td>
<td>—</td>
<td>194,423</td>
</tr>
<tr>
<td>Shares available for future equity grants</td>
<td>11,132</td>
<td>2,379,714</td>
<td>5,897,398</td>
</tr>
<tr>
<td>Series B redeemable convertible preferred stock warrants</td>
<td>417,040</td>
<td>185,328</td>
<td>185,328</td>
</tr>
<tr>
<td>Series C redeemable convertible preferred stock warrants</td>
<td>1,118,000</td>
<td>1,118,000</td>
<td>1,118,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>110,175,384</strong></td>
<td><strong>126,285,099</strong></td>
<td><strong>132,249,445</strong></td>
</tr>
</tbody>
</table>

12. Stock Plan

In September 2007, the Company adopted the Amended and Restated 2007 Stock Plan (the “Plan”), which was most recently amended in March 2015. The Plan provides for the grant of incentive and non-statutory stock options and RSUs to employees, directors, and consultants under terms and provisions established by the board of directors.

The board of directors determines the period over which the options vest and become exercisable. Options granted under the Plan are generally subject to a four-year vesting period, with 25% vesting after a one-year period and monthly vesting thereafter. Options expire after ten years. The exercise price of incentive stock options granted under the Plan must be at least equal to 100% of the fair value of the common stock at the date of grant, as determined by the board of directors. The exercise price of non-statutory options granted under the Plan must be at least equal to 85% of the fair value of the common stock at the date of grant, as determined by the board of directors. RSUs granted under the Plan are generally subject to a three- or four-year vesting period with annual vesting.
Stock Options

Activity under the Plan is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Shares Available for Grant</th>
<th>Options Outstanding</th>
<th></th>
<th></th>
<th>Aggregate Intrinsic Value (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Number of Shares Subject</td>
<td>Weighted— to Options</td>
<td>Average Exercise Price</td>
<td></td>
</tr>
<tr>
<td>Balance—December 31, 2011</td>
<td></td>
<td>12,077,116</td>
<td>$ 0.07</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Granted</td>
<td>(2,442,934)</td>
<td>2,442,934</td>
<td>0.19</td>
<td>$ 3</td>
<td></td>
</tr>
<tr>
<td>Exercised</td>
<td></td>
<td>(91,166)</td>
<td>0.05</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Canceled</td>
<td>463,834</td>
<td>(463,834)</td>
<td>0.15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance—December 31, 2012</td>
<td>1,211,624</td>
<td>13,965,050</td>
<td>0.09</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorized</td>
<td>2,650,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Granted</td>
<td>(4,317,448)</td>
<td>4,317,448</td>
<td>0.92</td>
<td>$ 1,111</td>
<td></td>
</tr>
<tr>
<td>Exercised</td>
<td></td>
<td>(2,188,940)</td>
<td>0.09</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Canceled</td>
<td>466,956</td>
<td>(466,956)</td>
<td>0.33</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance—December 31, 2013</td>
<td>11,132</td>
<td>15,626,602</td>
<td>0.32</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorized</td>
<td>16,600,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Granted</td>
<td>(14,729,144)</td>
<td>14,729,144</td>
<td>4.87</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exercised</td>
<td></td>
<td>(490,285)</td>
<td>0.20</td>
<td>$ 3,001</td>
<td></td>
</tr>
<tr>
<td>Canceled</td>
<td>497,726</td>
<td>(497,726)</td>
<td>1.39</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance—December 31, 2014</td>
<td>2,379,714</td>
<td>29,367,735</td>
<td>2.58</td>
<td>$ 207,863</td>
<td></td>
</tr>
<tr>
<td>Authorized (unaudited)</td>
<td>6,076,447</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Granted (unaudited)</td>
<td>(2,746,474)</td>
<td>2,552,051</td>
<td>11.29</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exercised (unaudited)</td>
<td></td>
<td>(112,101)</td>
<td>0.61</td>
<td>$ 1,478</td>
<td></td>
</tr>
<tr>
<td>Canceled (unaudited)</td>
<td>187,711</td>
<td>(187,711)</td>
<td>3.03</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance—March 31, 2015 (unaudited)</td>
<td>5,897,398</td>
<td>31,619,974</td>
<td>3.29</td>
<td>$ 492,036</td>
<td></td>
</tr>
<tr>
<td>Options exercisable—December 31, 2014</td>
<td>5,897,398</td>
<td>31,619,974</td>
<td>3.29</td>
<td>$ 492,036</td>
<td></td>
</tr>
<tr>
<td>Options vested and expected to vest— December 31, 2014</td>
<td>11,071,542</td>
<td>104,027</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Options vested and expected to vest— March 31, 2015 (unaudited)</td>
<td>27,638,142</td>
<td>197,803</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Options exercisable—March 31, 2015 (unaudited)</td>
<td>12,180,222</td>
<td>224,616</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Options vested and expected to vest—March 31, 2015 (unaudited)</td>
<td>29,781,221</td>
<td>466,370</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The aggregate intrinsic values of options outstanding, exercisable, vested and expected to vest were calculated as the difference between the exercise price of the options and the estimated fair value of the Company’s common stock, as determined by the board of directors, as of December 31, 2014 and March 31, 2015.

The total grant date fair value of options that vested during 2012, 2013, 2014, and the three months ended March 31, 2014 and 2015 was $0.1 million, $0.3 million, $1.7 million, $0.2 million, and $1.8 million, respectively.

As of December 31, 2014 and March 31, 2015, the weighted-average remaining contractual life was 6.7 years and 6.5 years, respectively, for exercisable options and 8.2 years and 8.1 years, respectively, for vested options.
and expected to vest options. The weighted-average remaining contractual life of options outstanding was 8.0 years, 8.3 years, and 8.2 years at December 31, 2013 and 2014 and March 31, 2015, respectively.

Restricted Stock Units (unaudited)

RSU activity under the Plan is as follows:

<table>
<thead>
<tr>
<th>Unvested balance—December 31, 2014</th>
<th>—</th>
<th>$ —</th>
</tr>
</thead>
<tbody>
<tr>
<td>Granted</td>
<td>194,423</td>
<td>18.85</td>
</tr>
<tr>
<td>Unvested balance—March 31, 2015</td>
<td>194,123</td>
<td>18.85</td>
</tr>
</tbody>
</table>

Stock-Based Compensation Expense

Total stock-based compensation recognized was as follows (in thousands):

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>Three Months Ended March 31, (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2012</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>$ 15</td>
</tr>
<tr>
<td>Research and development</td>
<td>62</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>29</td>
</tr>
<tr>
<td>General and administrative</td>
<td>26</td>
</tr>
<tr>
<td><strong>Total stock-based compensation expense</strong></td>
<td><strong>$132</strong></td>
</tr>
</tbody>
</table>

The weighted-average grant date fair value of stock options granted during 2012, 2013, 2014, and the three months ended March 31, 2015 was $0.11, $0.78, $3.64, and $9.87 per share. As of December 31, 2014 and March 31, 2015, the total unrecognized compensation expense related to unvested options, net of estimated forfeitures, was $43.9 million and $68.1 million, respectively, which the Company expects to recognize over an estimated weighted average period of 3.8 years and 3.7 years, respectively.

As of March 31, 2015, the total unrecognized compensation expense related to unvested RSUs, net of estimated forfeitures, was $3.4 million, which the Company expects to recognize over an estimated weighted average period of 3.0 years. As of March 31, 2015, the total unrecognized compensation expense related to unvested common stock issued in connection with the FitStar acquisition, net of estimated forfeitures, was $3.7 million, which the Company expects to recognize over an estimated weighted average period of 3.0 years.

Stock-based compensation is measured at the grant date based on the fair value of the award and is recognized as expense, net of estimated forfeitures, over the requisite service period, which is generally the vesting period of the respective award. The fair value of RSUs is the fair value of the Company’s common stock on the grant date. In determining the fair value of the options, the Company uses the Black-Scholes option-pricing model and assumptions discussed below. Each of these inputs is subjective and generally requires significant judgment.
Fair Value of Common Stock — The fair value of the shares of common stock underlying stock options has historically been established by the Company’s board of directors, which is responsible for these estimates, and has been based in part upon a valuation provided by an independent third-party valuation firm. Because there has been no public market for the Company’s common stock, its board of directors considered this independent valuation and other factors, including, but not limited to, revenue growth, the current status of the technical and commercial success of its operations, its financial condition, the stage of development and competition to establish the fair value of the Company’s common stock at the time of grant of the option. The fair value of the underlying common stock will be determined by the board of directors until such time as its common stock is listed on a stock exchange.

Expected Term — The expected term represents the period over which the Company anticipates stock-based awards to be outstanding. The Company does not have sufficient historical exercise data to provide a reasonable basis upon which to estimate expected term due to the limited period of time stock-based awards have been exercisable. As a result, for stock options, the Company used the simplified method to calculate the expected term estimate based on the vesting and contractual terms of the option. Under the simplified method, the expected term is equal to the average of the stock-based award’s weighted average vesting period and its contractual term.

Volatility — Expected volatility is a measure of the amount by which the stock price is expected to fluctuate. The Company estimates the expected volatility of the common stock underlying its stock options at the grant date by taking the average historical volatility of the common stock of a group of comparable publicly traded companies over a period equal to the expected life of the options.

Risk-Free Rate — The risk-free interest rate is estimated average interest rate based on U.S. Treasury zero-coupon notes with terms consistent with the expected term of the awards.

Dividend Yield — The Company has never declared or paid any cash dividends and does not presently plan to pay cash dividends in the foreseeable future. Consequently, it used an expected dividend yield of zero.

In addition, the Company is required to estimate the amount of stock-based compensation that it expects to be forfeited based on historical experience. The assumptions used in calculating the fair value of the stock-based awards represent management judgment. As a result, if factors change and different assumptions are used, the stock-based compensation expense could be materially different in the future. For 2012, 2013, 2014, and the three months ended March 31, 2014 and 2015, the Company recognized $0.1 million, $0.5 million, $6.2 million, $0.3 million, and $4.2 million, respectively, of stock-based compensation related to options granted to employees. The fair value of the stock option awards granted to employees was estimated at the date of grant using a Black-Scholes option-pricing model with the following assumptions:

<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>2012</td>
<td>2013</td>
</tr>
<tr>
<td>Expected term (in years)</td>
<td>6.25</td>
<td>6.00 – 6.25</td>
</tr>
<tr>
<td>Volatility</td>
<td>60.0% – 60.62%</td>
<td>60.57% – 62.03%</td>
</tr>
<tr>
<td>Risk-free interest rate</td>
<td>0.95% – 1.17%</td>
<td>1.04% – 1.93%</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>—%</td>
<td>—%</td>
</tr>
</tbody>
</table>

(1) The Company did not grant any stock options in the three months ended March 31, 2014.
The Company recognized stock-based compensation of $17,000, $0.1 million, $0.6 million, $37,000, and $0.7 million related to options granted to non-employees for 2012, 2013, 2014, and the three months ended March 31, 2014 and 2015, respectively.

13. Income Taxes

The following table presents domestic and foreign components of income (loss) before income taxes for the periods presented (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2012</td>
<td>2013</td>
<td>2014</td>
<td></td>
</tr>
<tr>
<td>United States</td>
<td>$(3,981)</td>
<td>$(13,779)</td>
<td>$150,137</td>
<td></td>
</tr>
<tr>
<td>Foreign</td>
<td>56</td>
<td>94</td>
<td>(10,364)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$(3,925)</td>
<td>$(13,685)</td>
<td>$139,773</td>
<td></td>
</tr>
</tbody>
</table>

The income tax expense is composed of the following (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2012</td>
<td>2013</td>
<td>2014</td>
<td></td>
</tr>
<tr>
<td>Current:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>$ 68</td>
<td>$31,176</td>
<td>$ 47,565</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>210</td>
<td>6,736</td>
<td>2,319</td>
<td></td>
</tr>
<tr>
<td>Foreign</td>
<td>13</td>
<td>25</td>
<td>113</td>
<td></td>
</tr>
<tr>
<td>Total current</td>
<td>291</td>
<td>37,937</td>
<td>49,997</td>
<td></td>
</tr>
<tr>
<td>Deferred:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>—</td>
<td>—</td>
<td>(39,339)</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>—</td>
<td>—</td>
<td>(2,651)</td>
<td></td>
</tr>
<tr>
<td>Foreign</td>
<td>—</td>
<td>—</td>
<td>(11)</td>
<td></td>
</tr>
<tr>
<td>Total deferred</td>
<td>—</td>
<td>—</td>
<td>(42,001)</td>
<td></td>
</tr>
<tr>
<td>Total income tax expense</td>
<td></td>
<td>$291</td>
<td>$37,937</td>
<td>$ 7,996</td>
</tr>
</tbody>
</table>

The reconciliation of the Company’s effective tax rate to the statutory federal rate is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2012</td>
<td>2013</td>
<td>2014</td>
<td></td>
</tr>
<tr>
<td>Tax at federal statutory rate</td>
<td></td>
<td>(35.0%)</td>
<td>(35.0%)</td>
<td>35.0%</td>
</tr>
<tr>
<td>State taxes, net of federal effect</td>
<td></td>
<td>3.5</td>
<td>32.0</td>
<td>(0.2)</td>
</tr>
<tr>
<td>Foreign rate differential</td>
<td></td>
<td>(0.2)</td>
<td>(0.1)</td>
<td>2.7</td>
</tr>
<tr>
<td>Tax credits</td>
<td>—</td>
<td>(9.6)</td>
<td>(1.1)</td>
<td></td>
</tr>
<tr>
<td>Domestic production activities deduction</td>
<td></td>
<td>—</td>
<td>(12.7)</td>
<td>(2.6)</td>
</tr>
<tr>
<td>Warrant fair value adjustment</td>
<td></td>
<td>—</td>
<td>8.6</td>
<td>3.3</td>
</tr>
<tr>
<td>Change in valuation allowance</td>
<td></td>
<td>37.7</td>
<td>292.6</td>
<td>(32.0)</td>
</tr>
<tr>
<td>Other</td>
<td>1.4</td>
<td>1.4</td>
<td>0.6</td>
<td></td>
</tr>
<tr>
<td>Effective tax rate</td>
<td></td>
<td>7.4%</td>
<td>277.2%</td>
<td>5.7%</td>
</tr>
</tbody>
</table>

For the three months ended March 31, 2015, the Company recorded an expense for income taxes of $28.4 million, for an effective tax rate of 37.2%. The effective tax rate for the three months ended March 31,
2015 reflected income tax expense on earnings during such period. The effective tax rate is higher than the statutory federal tax rate primarily due to state income taxes and certain permanent differences. For 2014, the Company recorded an expense for income taxes of $8.0 million, for an effective tax rate of 5.7%. The tax expense in 2014 reflects income tax expense on earnings in 2014 and a downward revaluation of the Company’s deferred tax assets due to a change in state tax law enacted during 2014. The expense was partially offset by a $51.3 million tax benefit, of which $44.9 million is related to federal tax benefits, from the full release of the Company’s deferred income tax asset valuation allowance. Of the $51.3 million tax benefit, $6.4 million related to a state tax benefit resulting from the release of the valuation allowance on state net operating losses and other state deferred tax assets. A significant majority of the foreign losses generated in 2014 were in low or no tax jurisdictions, and as such the Company did not record any deferred tax benefits for such losses.

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets were as follows (in thousands):

<table>
<thead>
<tr>
<th>Description</th>
<th>December 31, 2013</th>
<th>December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net operating loss carryforwards</td>
<td>$ 134</td>
<td>$ —</td>
</tr>
<tr>
<td>Tax credit carryforwards</td>
<td>887</td>
<td>1,331</td>
</tr>
<tr>
<td>Fixed assets and intangible assets</td>
<td>2,321</td>
<td>2,436</td>
</tr>
<tr>
<td>Other accruals and reserves</td>
<td>15,079</td>
<td>30,075</td>
</tr>
<tr>
<td>Fitbit Force recall reserve</td>
<td>32,926</td>
<td>8,159</td>
</tr>
<tr>
<td>Gross deferred tax assets</td>
<td>51,347</td>
<td>42,001</td>
</tr>
<tr>
<td>Valuation allowance</td>
<td>(51,347)</td>
<td>—</td>
</tr>
<tr>
<td>Net deferred tax assets</td>
<td>$ —</td>
<td>$ 42,001</td>
</tr>
</tbody>
</table>

The Company has recorded $33.6 million to current deferred tax assets and $8.4 million to long-term deferred taxes, which is included in other assets on the balance sheet.

The tax valuation allowance increased by $1.9 million during 2012 primarily due to an increase in deferred tax assets related to accruals and reserves. The tax valuation allowance increased by $45.6 million during 2013 primarily due to the accrual for the Fitbit Force recall and continued recognition of a full valuation allowance on deferred tax assets.

The Company accounts for deferred taxes under ASC Topic 740, “Income Taxes” (“ASC 740”) which involves weighing positive and negative evidence concerning the realizability of the Company’s deferred tax assets in each jurisdiction. The Company evaluated its ability to realize the benefit of its net deferred tax assets and weighed all available positive and negative evidence both objective and subjective in nature. In determining the need for a valuation allowance, the weight given to positive and negative evidence is commensurate with the extent to which the evidence may be objectively verified. Consideration was given to negative evidence such as: the duration and severity of losses in prior years, high seasonal revenue concentrations, increasing competitive pressures, and a challenging retail environment. However, after considering three consecutive years of revenue growth and a three-year cumulative income position as of September 30, 2014, the Company believes the weight of the objectively verifiable positive evidence is sufficient to overcome the weight of any negative evidence. As of December 31, 2014, the Company continued to believe that it was more-likely-than-not that it would have future taxable income sufficient to realize the benefit of the Company’s net deferred tax assets.

Accordingly, for 2014, based on its assessment of the realizability of its deferred tax assets, the Company released the valuation allowance against all of its U.S. deferred tax assets which resulted in a tax benefit of $51.3 million.
As of December 31, 2014, the Company has federal research credit carryforwards of approximately $0.1 million, which if not utilized, begin to expire in 2028 and California research credit carryforwards of approximately $2.8 million, which do not expire.

Utilization of the tax credit carry forward may be subject to an annual limitation due to the ownership percentage change limitations provided by the Internal Revenue Code of 1986 and similar state provisions. The annual limitation may result in the expiration of the net operating loss before utilization. The Company completed a Section 383 analysis through May 2014 and determined that an ownership change, as defined under Section 383 of the Internal Revenue Code, occurred in prior years. The Company does not expect the limitation to result in a reduction in total amount utilizable.

It is the intention of the Company to indefinitely reinvest the earnings of the Company’s foreign subsidiaries. The Company does not provide for U.S. income taxes on the earnings of its foreign subsidiaries as such earnings are to be reinvested indefinitely. If these earnings were distributed to the United States in the form of dividends or otherwise or if the shares of the relevant foreign subsidiaries were sold or otherwise transferred the Company would be subject to additional U.S. income taxes, subject to adjustment for foreign tax credits, and foreign withholding taxes. As of December 31, 2014, there was $0.3 million of cumulative foreign earnings upon which U.S. income taxes have not been provided.

As of December 31, 2013 and 2014, the Company has $8.0 million and $10.6 million of unrecognized tax benefits. A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at beginning of year</td>
<td>$ 634</td>
<td>$ 7,991</td>
</tr>
<tr>
<td>Reductions based on tax positions related to prior year</td>
<td>(87)</td>
<td>(418)</td>
</tr>
<tr>
<td>Additions based on tax positions related to current year</td>
<td>7,444</td>
<td>3,021</td>
</tr>
<tr>
<td>Balance at end of year</td>
<td>$7,991</td>
<td>$10,594</td>
</tr>
</tbody>
</table>

At December 31, 2014, the total amount of gross unrecognized tax benefits was $10.6 million, all of which would affect the effective tax rate if recognized. The Company does not have any tax positions as of December 31, 2014 for which it is reasonably possible the total amount of gross unrecognized tax benefits will increase or decrease within the following 12 months. The Company’s policy is to record interest and penalties related to unrecognized tax benefits as income tax expense. During 2013 and 2014, the Company recorded $0.1 million and $0.3 million related to the accrual of interest and penalties. During 2012, the Company did not accrue interest or penalties as the Company had net operating losses available to offset any tax adjustment.

The Company is subject to taxation in the United States and various states and foreign jurisdictions. The Company currently does not have any tax examinations in progress nor has it had any tax examinations since its inception. All of the Company’s tax years will remain open for examination by federal and state authorities for three and four years from the date of utilization of any net operating losses and tax credits.

14. Related-Party Transactions

Softbank Distribution Agreement

In December 2012, the Company granted SoftBank BB Corporation (“SoftBank BB”), an entity affiliated with SoftBank PrinceVille Investments, L.P., one of the Company’s investors, a distribution right for the
Company’s products in Japan, pursuant to a distribution agreement. The agreement was subsequently amended in December 2014 such that SoftBank BB relinquished its right of exclusivity.

For 2013 and 2014, the Company recognized $17.6 million in revenue and a reduction of $1.7 million to revenue respectively related to SoftBank BB. The Company also recognized $0.1 million in expenses related to SoftBank BB in 2013. There was no revenue or expenses related to SoftBank BB for 2012. During 2014, product sales to SoftBank BB were $1.2 million. However the Company accepted sales returns of $2.9 million due to the amendment of the distribution agreement. As of December 31, 2014, a net amount of $2.2 million was due to SoftBank BB, which was paid subsequent to December 31, 2014. There was no revenue or expenses related to SoftBank BB for the three months ended March 31, 2015, and no amounts were due to either party as of March 31, 2015.

15. Net Income (Loss) per Share Attributable to Common Stockholders and Unaudited Pro Forma Net Income (Loss) per Share Attributable to Common Stockholders

The following table sets forth the computation of the Company’s basic and diluted net income (loss) per share attributable to common stockholders (in thousands, except per share amounts):

<table>
<thead>
<tr>
<th>Numerator:</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2014 (unaudited)</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net income (loss)</td>
<td>$(4,216)</td>
<td>$(51,622)</td>
<td>$131,777</td>
<td>$8,872</td>
<td>$47,997</td>
</tr>
<tr>
<td>Less: noncumulative dividends to preferred stockholders</td>
<td>—</td>
<td>—</td>
<td>$(5,326)</td>
<td>(1,313)</td>
<td>(1,314)</td>
</tr>
<tr>
<td>Less: undistributed earnings to participating securities</td>
<td>—</td>
<td>—</td>
<td>(98,103)</td>
<td>(5,870)</td>
<td>(36,060)</td>
</tr>
<tr>
<td>Net income (loss) attributable to common stockholders—basic</td>
<td>$(4,216)</td>
<td>$(51,622)</td>
<td>$28,348</td>
<td>1,689</td>
<td>10,623</td>
</tr>
<tr>
<td>Add: adjustments to undistributed earnings to participating securities</td>
<td>—</td>
<td>—</td>
<td>10,175</td>
<td>570</td>
<td>4,992</td>
</tr>
<tr>
<td>Net income (loss) attributable to common stockholders—diluted</td>
<td>$(4,216)</td>
<td>$(51,622)</td>
<td>$38,523</td>
<td>$2,259</td>
<td>$15,615</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Denominator:</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Weighted-average shares of common stock—basic</td>
<td>24,506</td>
<td>26,120</td>
<td>26,901</td>
<td>26,770</td>
<td>27,467</td>
</tr>
<tr>
<td>Effect of potentially dilutive stock options</td>
<td>—</td>
<td>—</td>
<td>13,885</td>
<td>12,882</td>
<td>19,392</td>
</tr>
<tr>
<td>Weighted-average shares of common stock—diluted</td>
<td>24,506</td>
<td>26,120</td>
<td>40,786</td>
<td>39,652</td>
<td>46,859</td>
</tr>
<tr>
<td>Net income (loss) per share attributable to common stockholders:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$(0.17)</td>
<td>$(1.98)</td>
<td>$1.05</td>
<td>$0.06</td>
<td>$0.39</td>
</tr>
<tr>
<td>Diluted</td>
<td>$(0.17)</td>
<td>$(1.98)</td>
<td>$0.94</td>
<td>$0.06</td>
<td>$0.33</td>
</tr>
</tbody>
</table>
The following common stock equivalents (in thousands) were excluded from the computation of diluted net income (loss) per share for the periods presented because including them would have been antidilutive:

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Redeemable convertible preferred stock</td>
<td>73,569</td>
<td>93,002</td>
<td>93,234</td>
<td>93,002</td>
<td>93,234</td>
</tr>
<tr>
<td>Stock options to purchase common stock</td>
<td>13,965</td>
<td>15,627</td>
<td>2,946</td>
<td>593</td>
<td>1,066</td>
</tr>
<tr>
<td>Redeemable convertible preferred stock warrants</td>
<td>1,265</td>
<td>1,535</td>
<td>1,303</td>
<td>1,535</td>
<td>1,303</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>88,799</td>
<td>110,164</td>
<td>97,483</td>
<td>95,130</td>
<td>95,603</td>
</tr>
</tbody>
</table>

**Unaudited Pro Forma Net Income per Share**

The following table sets forth the computation of the Company’s unaudited pro forma basic and diluted net income per share attributable to common stockholders for 2014 (in thousands, except per share amounts) assuming the automatic conversion of the redeemable convertible preferred stock and the automatic conversion of the preferred stock warrants into common stock warrants and the remeasurement and the assumed reclassification to equity upon consummation of a qualified IPO as if it had occurred as of January 1, 2014:

<table>
<thead>
<tr>
<th>Year Ended December 31, 2014</th>
<th>Three Months Ended March 31, 2015 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Numerator:</strong></td>
<td></td>
</tr>
<tr>
<td>Net income</td>
<td>$ 131,777</td>
</tr>
<tr>
<td>Add: change in fair value of redeemable convertible preferred stock warrant liability</td>
<td>13,272</td>
</tr>
<tr>
<td>Pro forma net income attributable to common stockholders—basic and diluted</td>
<td>$ 145,049</td>
</tr>
<tr>
<td><strong>Denominator:</strong></td>
<td></td>
</tr>
<tr>
<td>Weighted-average shares of common stock outstanding</td>
<td>26,901</td>
</tr>
<tr>
<td>Pro forma adjustments to reflect assumed conversion of redeemable convertible preferred stock</td>
<td>93,095</td>
</tr>
<tr>
<td>Pro forma weighted-average shares of common stock—basic</td>
<td>119,996</td>
</tr>
<tr>
<td><strong>Effect of potentially dilutive:</strong></td>
<td></td>
</tr>
<tr>
<td>Stock options</td>
<td>13,885</td>
</tr>
<tr>
<td>Common stock warrants</td>
<td>1,191</td>
</tr>
<tr>
<td>Pro forma weighted-average shares of common stock—diluted</td>
<td>135,072</td>
</tr>
<tr>
<td><strong>Pro forma net income per share attributable to common stockholders:</strong></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$ 1.21</td>
</tr>
<tr>
<td>Diluted</td>
<td>$ 1.07</td>
</tr>
</tbody>
</table>
16. Significant Customer Information and Other Information

Retailer and Distributor Concentration

Retailers and distributors with revenue equal to or greater than 10% of total revenue for 2012, 2013, 2014, and the three months ended March 31, 2014 and 2015 were as follows:

<table>
<thead>
<tr>
<th></th>
<th>December 31,</th>
<th></th>
<th></th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2012</td>
<td>2013</td>
<td>2014</td>
<td>2014</td>
</tr>
<tr>
<td>A</td>
<td>*</td>
<td>*</td>
<td>13%</td>
<td>*</td>
</tr>
<tr>
<td>B</td>
<td>19%</td>
<td>14%</td>
<td>12</td>
<td>17</td>
</tr>
<tr>
<td>C</td>
<td>20</td>
<td>14</td>
<td>11</td>
<td>13</td>
</tr>
</tbody>
</table>

* Revenue was less than 10%.

Retailers and distributors that accounted for equal to or greater than 10% of net accounts receivable at December 31, 2013 and 2014 and March 31, 2015 were as follows:

<table>
<thead>
<tr>
<th></th>
<th>December 31,</th>
<th></th>
<th></th>
<th>March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2013</td>
<td>2014</td>
<td></td>
<td>2014</td>
</tr>
<tr>
<td>A</td>
<td>*</td>
<td>*</td>
<td>18%</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>22%</td>
<td>17%</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>15</td>
<td>14</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>14</td>
<td>13</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>*</td>
<td>10</td>
<td>*</td>
<td></td>
</tr>
</tbody>
</table>

* Accounts receivable were less than 10%.

Geographic and Other Information

Revenue by geographic region, based on ship-to destinations, was as follows (in thousands):

<table>
<thead>
<tr>
<th>Geographic Region</th>
<th>December 31,</th>
<th></th>
<th></th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2012</td>
<td>2013</td>
<td>2014</td>
<td>2014</td>
</tr>
<tr>
<td>United States</td>
<td>$ 67,248</td>
<td>$ 206,082</td>
<td>$ 562,553</td>
<td>$ 89,831</td>
</tr>
<tr>
<td>Americas excluding United States</td>
<td>—</td>
<td>9,094</td>
<td>38,576</td>
<td>3,716</td>
</tr>
<tr>
<td>Europe, Middle East, and Africa</td>
<td>6,274</td>
<td>25,041</td>
<td>60,699</td>
<td>8,724</td>
</tr>
<tr>
<td>APAC</td>
<td>2,851</td>
<td>30,870</td>
<td>83,605</td>
<td>6,544</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$ 76,373</td>
<td>$ 271,087</td>
<td>$ 745,433</td>
<td>$ 108,815</td>
</tr>
</tbody>
</table>

As of December 31, 2013 and 2014 and March 31, 2015, long-lived assets, which represent property and equipment, located outside the United States were $5.3 million, $20.0 million, and $21.4 million, respectively.

17. Acquisition (unaudited)

On March 13, 2015, the Company acquired all of the outstanding securities of FitStar, Inc., a privately-held company, for aggregate acquisition consideration of $32.8 million, comprised of $13.6 million related to the
issuance of 706,471 shares of the Company’s common stock, net of a repurchase of 16,663 shares, $11.5 million of cash, and $7.7 million of contingent consideration. FitStar is a provider of interactive video-based exercise experiences on mobile devices and computers that utilize proprietary algorithms to adjust and customize workouts for individual users. The acquisition is expected to enhance the Company’s software and services offerings.

The Company may be obligated to issue additional common stock or pay cash to FitStar shareholders. The actual amount of any contingent consideration that it pays with respect to the FitStar acquisition, if any, will depend on market-based events that may occur in the future. The Company determined the fair market value of this contingent consideration to be $7.7 million as of the acquisition date using the Monte Carlo simulation method. The fair value of this liability is adjusted at each reporting period, and the change in fair value is included in other income (expense), net on the consolidated statement of operations.

The following table summarizes the fair value of assets acquired and liabilities assumed (in thousands):

<table>
<thead>
<tr>
<th>Asset Category</th>
<th>Fair Value (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goodwill</td>
<td>$22,562</td>
</tr>
<tr>
<td>Developed and core technology</td>
<td>12,640</td>
</tr>
<tr>
<td>Customer relationships</td>
<td>128</td>
</tr>
<tr>
<td>Trademarks</td>
<td>1,150</td>
</tr>
<tr>
<td>Assumed liabilities, net of assets</td>
<td>(3,643)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$32,837</strong></td>
</tr>
</tbody>
</table>

The amortization periods of the acquired developed technology, customer relationships, and trademarks are 7.0 years, 1.3 years, and 5.0 years, respectively.

In addition, upon acquisition, the Company issued 205,478 shares of common stock net of a repurchase of 16,632 shares, valued at $4.2 million. The Company is also obligated to make cash payments up to $1.2 million. Both the common stock and the cash payments are additional consideration which is contingent upon former employees of FitStar continuing to be employed by the Company. As such, this additional consideration was not part of the purchase price and is recognized as post-acquisition compensation expense over the related requisite service period. The Company also recorded acquisition-related transaction costs of $0.3 million, which were included in general and administrative expenses in the consolidated statement of operations during the three months ended March 31, 2015.

The results of operations of the acquisition are included in the accompanying consolidated statements of operations from the date of acquisition. Pro forma results of operations for this acquisition have not been presented because they are not material to the Company’s consolidated financial statements.

18. Subsequent Events

Subsequent events have been evaluated through March 2, 2015 which is the date the financial statements were available to be issued.

On January 2, 2015, the Company repaid $125.0 million of its outstanding borrowings under the Asset-Based Credit Facility. Refer to Note 7 for further details.

From January 1, 2015 to March 2, 2015, the Company granted stock options to purchase an aggregate of 2,477,050 shares of the Company’s common stock at an exercise price of $11.06 per share.
19. Subsequent Events (unaudited)

The Company has performed an evaluation of subsequent events through May 1, 2015, which is the date the unaudited interim consolidated financial statements were issued.

From April 1, 2015 to May 1, 2015, the Company granted options to purchase an aggregate of 1,471,063 shares of the Company’s common stock at an exercise price of $18.85 per share.

On April 6, 2015, the Company amended its certificate of incorporation to increase the authorized common stock of the Company to 163,600,000 shares.
Since the launch of our first tracker, 13,229,816,962,374 steps have been taken by our community—enough to walk around the earth more than 250,000 times.*

* As of March 31, 2015

10.9 million
Devices sold in 2014

$745 million
Total revenue in 2014

$132 million
Net income in 2014
ITEM 13. **Other Expenses of Issuance and Distribution.**

The following table sets forth the costs and expenses to be paid by the Registrant, other than estimated writing discounts and commissions, in connection with the sale of the shares of Class A common stock being registered hereby. All amounts are estimates except for the SEC registration fee, the FINRA filing fee, and the New York Stock Exchange listing fee.

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<tr>
<th>Item</th>
<th>Amount</th>
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<tr>
<td>SEC registration fee</td>
<td>$11,620</td>
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<tr>
<td>FINRA filing fee</td>
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<td>New York Stock Exchange listing fee</td>
<td>*</td>
</tr>
<tr>
<td>Printing and engraving</td>
<td>*</td>
</tr>
<tr>
<td>Legal fees and expenses</td>
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<tr>
<td>Accounting fees and expenses</td>
<td>*</td>
</tr>
<tr>
<td>Road show expenses</td>
<td>*</td>
</tr>
<tr>
<td>Blue sky fees and expenses</td>
<td>*</td>
</tr>
<tr>
<td>Transfer agent and registrar fees and expenses</td>
<td>*</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>*</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>**$ *</td>
</tr>
</tbody>
</table>

* To be provided by amendment.

ITEM 14. **Indemnification of Directors and Officers.**

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation’s board of directors to grant, indemnity to directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the Delaware General Corporation Law are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

As permitted by the Delaware General Corporation Law, the Registrant’s restated certificate of incorporation that will be in effect immediately prior to the completion of this offering contains provisions that eliminate the personal liability of its directors for monetary damages for any breach of fiduciary duties as a director, except liability for the following:

- any breach of the director’s duty of loyalty to the Registrant or its stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- under Section 174 of the Delaware General Corporation Law (regarding unlawful dividends and stock purchases); or
- any transaction from which the director derived an improper personal benefit.

As permitted by the Delaware General Corporation Law, the Registrant’s restated bylaws that will be in effect immediately prior to the completion of this offering provide that:

- the Registrant is required to indemnify its directors and officers to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions;
- the Registrant may indemnify its other employees and agents as set forth in the Delaware General Corporation Law;
The Registrant is required to advance expenses, as incurred, to its directors and officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions; and

The rights conferred in the restated bylaws are not exclusive.

The Registrant has entered into indemnification agreements with each of its current directors and executive officers to provide these directors and executive officers additional contractual assurances regarding the scope of the indemnification set forth in the Registrant’s restated certificate of incorporation and restated bylaws and to provide additional procedural protections. At present, there is no pending litigation or proceeding involving a director, executive officer, or employee of the Registrant regarding which indemnification is sought. Reference is also made to the underwriting agreement filed as Exhibit 1.1 to this Registration Statement, which provides for the indemnification of executive officers, directors, and controlling persons of the Registrant against certain liabilities. The indemnification provisions in the Registrant’s restated certificate of incorporation and restated bylaws and the indemnification agreements entered into or to be entered into between the Registrant and each of its directors and executive officers may be sufficiently broad to permit indemnification of the Registrant’s directors and executive officers for liabilities arising under the Securities Act.

The Registrant has directors’ and officers’ liability insurance for securities matters.

ITEM 15. Recent Sales of Unregistered Securities.

Since January 1, 2012, the Registrant has issued and sold the following securities (after giving effect to stock splits):

1. Options to employees, directors, consultants, and other service providers to purchase an aggregate of 25,500,640 shares of Class B common stock under its Amended and Restated 2007 Stock Plan, or 2007 Plan, with per share exercise prices ranging from $0.08 to $18.85.
2. An aggregate of 194,423 restricted stock units to employees and other service providers to be settled in shares of Class B common stock under its 2007 Plan.
3. An aggregate of 12,000 shares of Class B common stock to a service provider under its 2007 Plan, for an aggregate purchase price of $41,280.
4. 2,993,408 shares of common stock to its employees, directors, consultants, and other service providers upon exercise of options granted by it under its 2007 Plan, with purchase prices ranging from $0.01 to $6.78 per share, for an aggregate purchase price of $460,327.
5. In April 2012, the Registrant issued a warrant to purchase 38,000 shares of its Series C convertible preferred stock at an exercise price of $0.50 per share to an accredited investor.
6. In September 2012, the Registrant issued warrants to purchase 1,080,000 shares of its Series C convertible preferred stock at an exercise price of $1.00 per share to two accredited investors.
7. Between June 2013 and August 2013, the Registrant issued and sold to six accredited investors an aggregate of 19,433,258 shares of Series D convertible preferred stock, at a purchase price of $2.21 per share, for aggregate consideration of $42,999,970. In connection with the closing of this offering, these shares of Series D convertible preferred stock will convert into 19,433,258 shares of Class B common stock.
8. In August 2014, the Registrant issued 231,712 shares of its Series B convertible preferred stock to five accredited investors at a per share purchase price of $0.3237 pursuant to the exercise of warrants for aggregate consideration of $75,005.
9. In March 2015, the Registrant issued 945,214 shares of Class B common stock to 38 accredited investors in connection with an acquisition.
Unless otherwise stated, the sales of the above securities were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act (or Regulation D or Regulation S promulgated thereunder), or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving any public offering or pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. 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.


(a) Exhibits.

<table>
<thead>
<tr>
<th>Exhibit Number</th>
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</table>
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Index to Financial Statements

(b) Financial Statement Schedules.

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<tbody>
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<td>10.9</td>
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* To be filed by amendment.
† Confidential treatment requested with respect to portions of this exhibit.

All financial statement schedules are omitted because they are not applicable or the information is included in the Registrant’s consolidated financial statements or related notes.

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 may be permitted to directors, officers and controlling persons of the Registrant pursuant to provisions described in Item 14 above, 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 Securities 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 Securities 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, 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, 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.
SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Francisco, State of California, on May 7, 2015.

FITBIT, INC.

By: 
/s/ James Park
James Park
President, Chief Executive Officer, and Chairman

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS that each individual whose signature appears below constitutes and appoints James Park and William Zerella, and each of them, his true and lawful attorneys-in-fact and agents with full power of substitution, for him and in his 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 the Registration Statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act, and all post-effective amendments thereto, and to file the same, with all exhibits thereto and all 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 and about the premises, as fully to all intents and purposes as he 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 their substitute or substitutes, may lawfully do or cause to be done or by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the date indicated:

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>/s/ James Park</td>
<td>President, Chief Executive Officer, and Chairman</td>
<td>May 7, 2015</td>
</tr>
<tr>
<td>James Park</td>
<td>(Principal Executive Officer)</td>
<td></td>
</tr>
<tr>
<td>/s/ William Zerella</td>
<td>Chief Financial Officer</td>
<td>May 7, 2015</td>
</tr>
<tr>
<td>William Zerella</td>
<td>(Principal Financial and Accounting Officer)</td>
<td></td>
</tr>
<tr>
<td>/s/ Eric N. Friedman</td>
<td>Chief Technology Officer and Director</td>
<td>May 7, 2015</td>
</tr>
<tr>
<td>Eric N. Friedman</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ Jonathan D. Callaghan</td>
<td>Director</td>
<td>May 7, 2015</td>
</tr>
<tr>
<td>Jonathan D. Callaghan</td>
<td></td>
<td></td>
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<tr>
<td>/s/ Steven Murray</td>
<td>Director</td>
<td>May 7, 2015</td>
</tr>
<tr>
<td>Steven Murray</td>
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<tr>
<td>/s/ Christopher Paisley</td>
<td>Director</td>
<td>May 7, 2015</td>
</tr>
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<td>Christopher Paisley</td>
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SECOND AMENDED AND RESTATED BYLAWS
OF
FITBIT, INC.
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</tr>
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<td>3.2</td>
<td>Election And Term Of Office Of Directors</td>
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</tr>
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SECOND AMENDED AND RESTATED BYLAWS
OF
FITBIT, INC.

ARTICLE I
CORPORATE OFFICES

1.1 Registered Office.

Unless and until changed by the board of directors (the “Board of Directors”) of FitBit, Inc. (the “Corporation”), the registered office of the Corporation shall be in the City of Wilmington, County of New Castle, State of Delaware. The name of the registered agent of the Corporation at such location is The Company Corporation.

1.2 Other Offices.

The Board of Directors may at any time establish other offices at any place or places where the Corporation is qualified to do business.

ARTICLE II
MEETINGS OF STOCKHOLDERS

2.1 Annual Meetings.

(a) The annual meeting of stockholders shall be held on such date, time and place as may be designated by resolution of the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting may be held solely by means of remote communication, as permitted by Section 211 of the Delaware General Corporation Law (“DGCL”). At such meetings, directors shall be elected and any other proper business may be transacted.

(b) Nominations of persons for election to the Board of Directors and the proposal of business to be transacted by stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation’s notice with respect to such meeting, (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 the notice provided for in this Section 2.1, who is entitled to vote for the election of directors or such other business at the meeting, and who has complied with the notice procedures set forth in this Section 2.1.

(c) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (b) of this Section 2.1, the
stockholder must have given timely notice thereof in writing to the secretary of the Corporation, as provided in this Section 2.1, and if the proposal is for other business, such other business is a proper matter for stockholder action under the DGCL.

(d) To be timely, a stockholder’s notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than 90 days nor more than 120 days before the anniversary date of the prior year’s meeting; provided, however, that if the date of the annual meeting is advanced more than 30 days before or delayed more than 30 days after such anniversary date, notice by the stockholder to be timely must be so received not later than the close of business on the later of the 90th day before the meeting or the 10th day following the day on which a public announcement of the meeting is first made.

(e) Such stockholder’s notice shall set forth (i) as to each person whom the stockholder proposes to nominate for election or re-election as a director, the name, age, business address and residence address of such person; the principal occupation or employment of such person and the class and number of shares of the Corporation which are beneficially owned by such person; (ii) as to any other business that the stockholder proposes to bring forward in the meeting, a brief description of such business, 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 (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made, the name and address of such stockholder and of such beneficial owner and the class and number of shares of the Corporation which are owned of record by such stockholder and beneficially by such beneficial owner.

(f) Only persons who are nominated in accordance with the procedures set forth in this Section 2.1 shall be eligible for election as directors. The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by the Bylaws, and if he or she should so determine, he or she shall so declare to the meeting and the defective nomination shall be disregarded.

2.2 Special Meetings.

(a) Special meetings of the stockholders, other than those required by statute, may be called at any time by the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board of Directors. For purposes of these Bylaws, the term “Whole Board” shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships. The Board of Directors may postpone or reschedule any previously-scheduled special meeting.

(b) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation’s notice of meeting (i) by or at the direction of the Board of Directors or (ii) by any stockholder of record at the time of giving of notice provided for in this paragraph, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2.2. Nominations by stockholders of persons for election to the Board of Directors may be made at such a special meeting of stockholders if the stockholder’s notice has been delivered to the Secretary at the principal executive offices of the Corporation not later than the close of
2.3 Notice Of Stockholders’ Meetings.

(a) Notice of the place, if any, date and time of all meetings of stockholders, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present and vote at such meeting, 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, except as otherwise provided herein or required by law or the Certificate of Incorporation. Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic mail or other electronic transmission, in the manner provided in Section 232 of the DGCL. An affidavit of the secretary or an assistant secretary or of the transfer agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(b) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxyholders 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; provided, however, that if the date of any adjourned meeting is more than 30 days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, notice of the place, if any, date, and time of the adjourned 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 such adjourned meeting, shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

2.4 Quorum.

(a) At any meeting of the stockholders, the holders of a majority of the shares of stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for all purposes, except as otherwise provided by the DGCL or by the Certificate of Incorporation. Where a separate vote by a class or classes or series is required, a majority of the shares of such class or classes or series present in person or by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter.

(b) If a quorum shall fail to attend any meeting, the chairman of the meeting may adjourn the meeting to another place, if any, date or time.
2.5 Organization; Conduct of Business.

(a) The chief executive officer of the Corporation or, if no such officer has been appointed or in his or her absence, the president of the Corporation or, in his or her absence, the chairman of the Board of Directors, shall call to order any meeting of the stockholders and act as chairman of the meeting. In the absence of the secretary of the Corporation, the secretary of the meeting shall be such person as the chairman of the meeting appoints.

(b) The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including the manner of voting and the conduct of business. The chairman shall have the power to adjourn the meeting to another place, if any, date and time. The date and time of opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

2.6 Proxies and Voting.

(a) At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting. Any copy, facsimile communication or other reliable reproduction of the writing or transmission created pursuant to this paragraph may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(b) The Corporation may, and to the extent required by law, shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chairman of the meeting may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Every vote taken by ballots shall be counted by a duly appointed inspector or inspectors.

(c) All elections of directors shall be determined by a plurality of the votes cast, and except as otherwise required by law, all other matters shall be determined by a majority of the votes cast affirmatively or negatively.

(d) Unless otherwise provided in the Certificate of Incorporation, all voting on the election of directors shall be by written ballot. Voting on other matters may be by voice vote, except if otherwise required by law or by the Certificate of Incorporation; provided, however, that a vote by written ballot shall be taken if the chairman of the meeting so elects or if so demanded by a stockholder. The requirement, if any, of a written ballot may be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxyholder.
2.7 Waiver Of Notice.

Whenever notice is required to be given under any provision of the DGCL or of the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, or waiver by electronic mail or other electronic transmission by such person, whether before or after the time stated therein, 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 of notice by electronic transmission, unless so required by the Certificate of Incorporation or these Bylaws.

2.8 Stockholder Action By Written Consent Without A Meeting.

(a) Any action required to be taken at any annual or special meeting of stockholders of the Corporation, or any action that may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, is (i) 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, and (ii) delivered to the Corporation in accordance with Section 228(a) of the DGCL.

(b) Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days after the date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take action are delivered to the Corporation in the manner prescribed in this Section 2.8. An electronic mail or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for purposes of this Section to the extent permitted by law. Any such consent shall be delivered in accordance with Section 228(d)(1) of the DGCL.

(c) 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.

(d) 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 (including by electronic mail or other electronic transmission as permitted by law). 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 notice and written consent have been given as provided in Section 228 of the DGCL.
2.9 Record Date For Stockholder Notice: Voting; Giving Consents.

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, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or 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 a record date, which record date may not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which (i) with respect to a stockholder meeting, shall not be not less than 10 nor more than 60 days before the date of such meeting, (ii) with respect to a consent to corporate action without a meeting, shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors or (iii) with respect to any other action, shall not be more than 60 days before such other action.

If the Board of Directors does not so fix a record date:

(a) The record date for determining stockholders entitled to notice of or 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.

(b) The record date for determining stockholders entitled to consent to corporate action in writing without a meeting (i) when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent (including consent by electronic mail or other electronic transmission as permitted by law) is delivered to the Corporation by a stockholder of record as of the close of business on the prior business day and (ii) when prior action by the Board of Directors is required, shall be the close of business on the day the Board of Directors adopts the resolution taking such prior action.

(c) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

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, if such adjournment is for 30 days or less; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.
ARTICLE III

DIRECTORS

3.1 Number Of Directors.

The number of directors constituting the Whole Board shall be three.

Subject to the rights of the holders of any series of preferred stock to elect directors under specified circumstances, this number may be changed from time to time by a resolution adopted by a majority of the Whole Board. No decrease in the number of authorized directors shall shorten the term of any incumbent director.

3.2 Election And Term Of Office Of Directors.

Except as provided in Section 3.3 of these Bylaws, and unless otherwise provided in the Certificate of Incorporation, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Directors need not be stockholders. Each director, including a director elected to fill a vacancy, shall hold office until his or her successor is elected or until his or her earlier resignation or removal.

3.3 Director Resignations; Newly Created Directors And Vacancies.

(a) Any director may resign at any time upon written notice to the attention of the secretary of the Corporation or, if there is no secretary in office, then to the attention of any other corporate officer or to the Board of Directors as a whole. When one or more directors so resigns and the resignation is 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 as provided in this section in the filling of other vacancies.

(b) Subject to the rights of the holders of any series of preferred stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, removal from office or other cause shall, unless otherwise required by law or by resolution of the Board of Directors, be filled only by a majority vote of the directors then in office, though less than a quorum, and directors so chosen shall serve for a term expiring at the next annual meeting of stockholders or until such director’s successor shall have been duly elected.

(c) 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 may 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.
3.4 Participation In Meetings By Conference Telephone.

Members of the Board of Directors, or of any committee thereof, may participate in a meeting of the Board of Directors, or any committee, 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.

3.5 Regular Meetings.

Regular meetings of the Board of Directors may be held at such date, time and place as shall from time to time be determined by the Board. A regular meeting of the Board of Directors shall be held immediately after the conclusion of each annual meeting of stockholders.

3.6 Special Meetings.

(a) Special meetings of the Board of Directors may be called by the Chairman of the Board, the president, the chief executive officer or by a majority of the Whole Board, and shall be held at such place, date and time as he, she or they shall fix.

(b) Notice of the place, date and time of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail, charges prepaid, facsimile or electronic mail, addressed to each director at that director’s address as it is shown on the records of the Corporation. If the notice is mailed, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. If the notice is delivered
personally, or by facsimile, electronic mail or telephone, it shall be delivered at least 24 hours before the time of the holding of the meeting. The notice need not specify the place of the meeting, if the meeting is to be held at the principal executive office of the Corporation. Any and all business may be transacted at a special meeting, unless otherwise indicated in the notice thereof.

3.7 Quorum.

(a) At any meeting of the Board of Directors, a majority of the Whole Board shall constitute a quorum for all purposes, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation. If a quorum shall fail to attend any meeting, then a majority of the directors present may adjourn the meeting to another place, date or time, without further notice or waiver thereof.

(b) A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

3.8 Waiver Of Notice.

Whenever notice of a Board of Directors meeting is required to be given under any provision of the DGCL or of the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, or waiver by electronic mail or other electronic transmission by such person, whether before or after the time stated therein, 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 directors, or members of a committee of directors, 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.

3.9 Conduct of Business: Board Action By Written Consent Without A Meeting.

(a) At any meeting of the Board of Directors, business shall be transacted in such order and manner as the Board of Directors may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present, except as otherwise provided in these Bylaws or by law.

(b) 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 the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filings 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.
3.10 Compensation Of Directors.

The Board of Directors shall have the authority to fix the compensation of the directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors, and may be paid a fixed sum for attendance at each meeting of the Board of Directors, or paid a stated salary or paid other compensation as director. No such compensation shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed compensation for attending committee meetings.

3.11 Approval Of Loans To Officers.

Subject to applicable law, including Section 13(k) of the Securities Exchange Act of 1934, 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 subsidiary, including any officer or employee who is a director of the Corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty 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 this section shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute.

3.12 Removal Of Directors.

Unless otherwise restricted by statute, by the Certificate of Incorporation or by these Bylaws, any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.

3.13 Chairman Of The Board Of Directors.

The Corporation may have, at the discretion of the Board of Directors, a chairman of the Board of Directors who shall not be considered by virtue of holding such position to be an officer of the Corporation.

ARTICLE IV

COMMITTEES

4.1 Committees Of Directors.

The Board of Directors may from time to time designate committees of the Board of Directors, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Board of Directors and shall, for those committees and any others provided for herein, elect a director or directors to serve as the member or members, designating, if it desires, other directors as alternate members who may replace any absent members at any meeting of the committee. In the absence of any member of any committee and any alternate member in his or her place, the member or members of the committee present at the meeting, whether or not he or
she or they constitute a quorum, may by unanimous vote appoint another member of the Board of Directors to act at the meeting in the place of the absent member. Any Board committee may create one or more subcommittees, each subcommittee to consist of one or more members of such committee, and delegate to the subcommittee any or all of the powers and authority of the committee.

4.2 Committee Minutes.

Each committee shall keep regular minutes of its meetings and maintain them in the Corporation’s official minute book.

4.3 Conduct of Business.

(a) Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as otherwise provided herein or required by law. Adequate provision shall be made for notice to members of all meetings; one-half of the members shall constitute a quorum; and all matters shall be determined by a majority vote of the members present. Action may be taken by any committee without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of such 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.

(b) The Board of Directors may adopt rules for the governance of any committee not inconsistent with these Bylaws.

ARTICLE V

OFFICERS

5.1 Officers.

The officers of the Corporation shall be a chief executive officer, a president, a secretary, and a chief financial officer. The Corporation may also have, at the discretion of the Board of Directors, a chief executive officer, one or more vice presidents, one or more assistant secretaries, a treasurer and one or more assistant treasurers, and any such other officers as may be appointed in accordance with these Bylaws. Any number of offices may be held by the same person.

5.2 Appointment Of Officers.

The officers of the Corporation except such officers as may be appointed in accordance with Sections 5.3 or 5.5 of these Bylaws, shall be appointed by the Board of Directors.
5.3 Subordinate Officers.

The Board of Directors may appoint or empower the chief executive officer or the president to appoint, such other officers and agents as the business of the Corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board of Directors or such other officer may from time to time determine. The Board of Directors may empower the chief executive officer or the president to define the authority and duties of such subordinate officers.

5.4 Removal And Resignation Of Officers.

(a) 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 an affirmative vote of the majority of the Board of Directors at any regular or special meeting of the board or, except in the case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors.

(b) Any officer may resign at any time by giving written notice to the secretary of 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 the officer is removed before such later time); and, unless otherwise specified in that notice, 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 in the manner prescribed in these Bylaws for regular appointments to that office.

5.6 Chief Executive Officer.

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board, if any, the chief executive officer of the Corporation (if such an officer is appointed) shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and the officers of the Corporation. He or she shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board, at all meetings of the Board of Directors, shall have the general powers and duties of management usually vested in the office of chief executive officer of a Corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

5.7 President.

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board, if there is one, or to the chief executive officer, if such an officer is appointed, the president shall be the principal 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 other officers of the Corporation. He or she shall have the general powers and duties of management usually vested in the office of president of a Corporation and such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.
5.8 Vice Presidents.

In the absence or disability of the chief executive officer and president, the vice presidents, if any, in order of their rank as fixed by the Board of Directors or, if not ranked, a vice president designated by the Board of Directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively (in order of priority) by the Board of Directors, the chief executive officer or the president.

5.9 Secretary.

(a) The secretary shall keep or cause to be kept, at the principal executive office of the Corporation or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, the names of those present at directors’ meetings or committee meetings, the number of shares present or represented at stockholders’ meetings and the proceedings thereof.

(b) The secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at such other place as maybe designated by the Board of Directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

(c) The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors required to be given by law or by these Bylaws. He or she shall keep the seal of the Corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors, by custom or by these Bylaws.

5.10 Chief Financial Officer.

(a) The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares.

(b) The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as maybe designated by the Board of Directors. He or she shall disburse the funds of the Corporation as maybe ordered by the Board of Directors, shall render to the president, the chief executive officer, or the directors, upon request, an account of all his or her transactions as chief financial officer and of the financial condition of the Corporation, and shall have other powers and perform such other duties as may be prescribed by the Board of Directors, by custom or by these Bylaws.
5.11 **Action With Respect to Securities Of Other Corporations.**  
Unless otherwise directed by the Board of Directors, the chief executive officer, the president or any officer of the Corporation authorized by the chief executive officer or the president is authorized to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other corporation in which the Corporation may hold securities and otherwise to exercise any and all rights and powers which the Corporation may possess by reason of its ownership of securities in such other corporation.

5.12 **Delegation of Authority.**  
Notwithstanding any other provision in these Bylaws, the Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents.

**ARTICLE VI**

**INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS**

6.1 **Indemnification Of Directors And Officers.**  
The Corporation shall, to the maximum extent and in the manner permitted by applicable law (including as applicable law may change in a way that expands the Corporation’s power to do so) indemnify each of its directors and officers, either incumbent or former, against all expenses, liability and loss (including attorneys fees, judgments, fines, ERISA excise taxes and amounts paid in settlement) actually and reasonably incurred by them in connection with any action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), in which such person was or is a party, is threatened to be made a party, or is otherwise involved by reason of the fact that such person is or was a director or officer of the Corporation or a predecessor corporation. For purposes of this Article VI, that agency shall include the acts and omissions of the Corporation’s directors and officers in those capacities, as well as their capacity as a director, officer, manager, trustee, administrator, employee, partner, or other agent of or at other entities or enterprises (whether they be corporations, limited liability companies, joint ventures, employee benefit plans or other trusts, or otherwise) if the director or officer of the Corporation is or was serving in the additional capacity or capacities at the request of the Corporation. For purposes of this Article VI, “officers” of the Corporation means those persons elected as officers of the Corporation by act of the Corporation’s Board of Directors.
6.2 Indemnification Of Others.

The Corporation shall have the power, to the extent and in the manner permitted by applicable law (including as applicable law may change in a way that expands the Corporation’s power to do so) and to the extent authorized by the Board of Directors, to indemnify each of its employees and agents (other than directors and officers) against all expenses, liability and loss (including attorneys fees, judgments, fines, ERISA excise taxes and amounts paid in settlement) actually and reasonably incurred by them in connection with any action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), in which such person is a party, is threatened to be made a party, or is otherwise involved by reason of the fact that such person is or was an employee or agent of the Corporation or a predecessor corporation. For purposes of this Article VI, that agency shall include the acts and omissions of the Corporation’s employees and agents in those capacities, as well as their capacity as a director, officer, manager, trustee, administrator, employee, partner, or other agent of or at other entities or enterprises (whether they be corporations, partnerships, limited liability companies, joint ventures, employee benefit plans or other trusts, or otherwise) if the employee or agent of the Corporation is or was serving in the additional capacity or capacities at the request of the Corporation.

6.3 Payment Of Expenses In Advance.

Expenses incurred in defending any civil or criminal action or proceeding for which indemnification is required pursuant to Section 6.1, or for which indemnification is permitted pursuant to Section 6.2, following authorization thereof by the Board of Directors, shall be paid by the Corporation in advance of the final disposition of such action or proceeding if the Corporation receives an undertaking by or on behalf of the indemnified party to repay any portion of the amount so advanced for which it is ultimately determined that the indemnified party is not entitled to be indemnified by the Corporation.

6.4 Indemnity Not Exclusive.

The indemnification provided by this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, to the extent that such additional rights to indemnification are authorized in the Certificate of Incorporation.

ARTICLE VII

RECORDS AND REPORTS

7.1 Maintenance And Inspection Of Records.

(a) The Corporation shall, either at its principal executive offices or at such place or places as designated by the Board of Directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books and other records.

(b) Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Corporation’s stock ledger, a list of its
stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person’s interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in Delaware or at its principal place of business.

(c) A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in each such stockholder’s name, shall be open to the examination of any such stockholder for a period of at least 10 days before the meeting to the extent and in the manner provided by law. The stock list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law. This list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

7.2 Inspection By Directors.

Any director shall have the right to examine the Corporation’s stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his or her position as a director.

7.3 Annual Report To Stockholders; Waiver.

(a) As long as the Corporation is subject to Section 2115 of the California Corporations Code, the Board of Directors shall cause an annual report to be sent to the stockholders not later than 120 days after the close of the fiscal year adopted by the Corporation. Such report shall be sent at least 15 days (or, if sent by third-class mail, 35 days) before the annual meeting of stockholders to be held during the next fiscal year and in the manner specified in Section 2.5 of these bylaws for giving notice to stockholders of the Corporation.

(b) The annual report shall contain (a) a balance sheet as of the end of the fiscal year, (b) an income statement, (c) a statement of changes in financial position for the fiscal year, and (d) any report of independent accountants or, if there is no such report, the certificate of an authorized officer of the Corporation that the statements were prepared without audit from the books and records of the Corporation.

(c) The foregoing requirement of an annual report is waived so long as the shares of the Corporation are held by fewer than 100 holders of record.
ARTICLE VIII

GENERAL MATTERS

8.1 Checks.

From time to time, the Board of Directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the Corporation, and only the persons so authorized shall sign or endorse those instruments.

8.2 Execution Of Corporate Contracts And Instruments.

The Board of Directors may, except as otherwise provided in these Bylaws, authorize any officer or officers, or agent or agents, to enter into any contract or execute any 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 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.

8.3 Stock Certificates.

(a) The shares of the Corporation shall be represented by certificates. Every stockholder shall be entitled to have a certificate signed by, or in the name of the Corporation by the chairman or vice-chairman of the Board of Directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the Corporation. 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 he or she were such officer, transfer agent or registrar at the date of issue.

(b) No stock certificates will be issued in bearer form.

8.4 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, 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.
8.5 Lost Certificates.

Except as provided in this Section 8.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrended to the Corporation and cancelled at the same time. The Corporation may issue a new certificate of stock in the place of any certificate previously issued by it, alleged to have been lost, stolen, mutilated or destroyed, and the Corporation may require the owner of the lost, stolen, mutilated or destroyed certificate, or the 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, mutilation or destruction of any such certificate or the issuance of such new certificate.

8.6 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 both a corporation (or other entity) and a natural person.

8.7 Fiscal Year.

The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors and may be changed by the Board of Directors.

8.8 Seal.

The Corporation may adopt a corporate seal, which may be altered at pleasure, and may use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

8.9 Transfers of Stock.

Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents designated to transfer shares of the stock of the Corporation.

8.10 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 another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.
8.11 Facsimile Signature.

In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

ARTICLE IX

AMENDMENTS

The Bylaws of the Corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that no bylaw may be adopted, amended or repealed by the stockholders except by the vote or written consent of at least a majority of the voting power of the Corporation. The Corporation may, in its Certificate of Incorporation, confer the power to adopt, amend or repeal Bylaws upon the Board of Directors. The fact that such power has been so conferred upon the Board of Directors shall not divest the stockholders of the power, nor limit their power, to adopt, amend or repeal Bylaws as set forth in this Article IX.
1. Number of Directors. Article III, Section 3.1 of the Second Amended and Restated Bylaws of FitBit, Inc. shall be deleted in its entirety and replaced with the following:

   3.1 Number Of Directors.
   The number of directors constituting the Whole Board shall be seven (7).
   Subject to the rights of the holders of any series of preferred stock to elect directors under specified circumstances, this number may be changed from time to time by a resolution adopted by a majority of the Whole Board. No decrease in the number of authorized directors shall shorten the term of any incumbent director.

2. Effective Date. This Amendment shall be effective as of the date it is adopted by resolution of the Board of Directors.

3. Effect. Except as otherwise provided herein, the Bylaws shall remain in full force and effect.
THIRD AMENDMENT TO THE 
SECOND AMENDED AND RESTATED BYLAWS 
OF 
FITBIT, INC.

1. **Uncertificated Stock.** Article VIII, Section 8.3 of the Second Amended and Restated Bylaws (the "Bylaws") of FitBit, Inc. shall be deleted in its entirety and replaced with the following:

   "8.3 Stock Certificates
   (a) The shares of capital stock of the Corporation shall be represented by certificates; provided, however, that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock may be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation (or the transfer agent or registrar, as the case may be). Notwithstanding the adoption of such resolution by the Board of Directors, every holder of stock that is a certified security 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 a vice president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary, of the Corporation, certifying the number of shares owned by such stockholder in the Corporation. 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 shall have 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 an officer, transfer agent or registrar at the date of issue.
   (b) The Corporation may issue a new certificate of stock, or uncertificated shares, in the place of any certificate previously issued by it, 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, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner’s legal representative, to agree to indemnify the Corporation and/or 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.
   (c) The issue, transfer, conversion and registration of stock certificates and uncertificated securities shall be governed by such other regulations as the Board of Directors may establish."

2. Sections 8.4 and 8.5 of the Bylaws shall be deleted in their entirety and replaced with the following: “Reserved”.

3. Section 5.9(b) of the Bylaws shall be deleted in its entirety and replaced with the following:
“The secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at such other place as maybe designated by the Board of Directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares (if applicable and if such shares are not uncertificated shares), and the number and date of cancellation of every certificate surrendered for cancellation.”

4. **Effective Date.** This Amendment shall be effective as of the date it is adopted by resolution of the Board of Directors.

5. **Effect.** Except as otherwise provided herein, the Bylaws shall remain in full force and effect.
FITBIT, INC.

THIRD AMENDED AND RESTATED

INVESTORS’ RIGHTS AGREEMENT

June 6, 2013
THIRD AMENDED AND RESTATED INVESTORS’ RIGHTS AGREEMENT

THIS THIRD AMENDED AND RESTATED INVESTORS’ RIGHTS AGREEMENT (the “Agreement”) is made as of the 6th day of June, 2013, by and among FITBIT, INC., a Delaware corporation (the “Company”), the investors listed on Schedule A hereto, each of which is herein referred to as an “Investor”, and James Park and Eric Friedman (the “Key Holders”).

RECITALS

WHEREAS, in connection with the purchase by certain of the Investors of Series C Preferred Stock (“Series C Preferred Stock”) pursuant to a certain Series C Preferred Stock Purchase Agreement dated as of September 27, 2011, as amended (the “Series C Agreement”), the Company and certain of the Investors entered into that certain Second Amended and Restated Investor’s Rights Agreement dated as of September 27, 2011, as amended (the “Original Agreement”);

WHEREAS, the Company and certain of the Investors are parties to the Series D Preferred Stock Purchase Agreement of even date herewith (the “Series D Agreement”); and

WHEREAS, in order to induce such Investors to purchase Series D Preferred Stock (the “Series D Preferred Stock” and together with the Company’s Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, the “Preferred Stock”) and invest funds in the Company pursuant to the Series D Agreement, the Investors and the Company hereby agree that this Agreement shall restate the Original Agreement and shall govern the rights of the Investors to cause the Company to register shares of Common Stock issued or issuable to them and certain other matters as set forth herein;

NOW, THEREFORE, THE PARTIES HEREBY AGREE TO RESTATE THE ORIGINAL AGREEMENT TO READ IN ITS ENTIRETY AS FOLLOWS:

1. Registration Rights. The Company covenants and agrees as follows:

1.1 Definitions. For purposes of this Section 1:

(a) The term “Act” means the Securities Act of 1933, as amended.

(b) The term “Form S-3” means such form under the Act as in effect on the date hereof or any registration form under the Act subsequently adopted by the SEC that permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

(c) The term “Holder” means any person owning or having the right to acquire Registrable Securities or any assignee thereof in accordance with Section 1.11 hereof.
(d) The term “Initial Offering” means the Company’s first firm commitment underwritten public offering of its Common Stock under the Act.


(f) The terms “register,” “registered,” and “registration” refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Act, and the declaration or ordering of effectiveness of such registration statement or document.

(g) The term “Registrable Securities” means (i) the Common Stock issuable or issued upon conversion of the Preferred Stock, including but not limited to shares of Series B Preferred Stock or Series C Preferred Stock issuable upon exercise of the Warrants, and (ii) solely for purposes of registrations pursuant to Sections 1.3 and 1.4, shares of Common Stock held by the Key Holders, and in the case of each of (i) and (ii), any Common Stock of the Company 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 (i) or (ii) above, excluding in all cases, however, any Registrable Securities sold by a person in a transaction in which his rights under this Section 1 are not assigned.

(h) The number of shares of “Registrable Securities” outstanding shall be determined by the number of shares of Common Stock outstanding that are, and the number of shares of Common Stock issuable pursuant to then exercisable or convertible securities that are, Registrable Securities.

(i) The term “Rule 144” shall mean Rule 144 under the Act.

(j) The term “SEC” shall mean the Securities and Exchange Commission.

(k) The term “Common Stock” means shares of the Company’s common stock, $.0001 par value.

(l) The term “Warrants” shall mean (a) those certain warrants to purchase shares of Series B Preferred Stock issued to those Investors who provided bridge loans for the Company in July 2009, (b) subject to the exercise thereof and execution by the holder of a joinder to this Agreement, the warrant issued to Silicon Valley Bank in June 2011; and (c) subject to the exercise thereof and execution by the holder of a joinder to this Agreement, the warrants issued to Silicon Valley Bank and WestRiver Mezzanine Loans, LLC in September 2012.

1.2 Request for Registration.

(a) Subject to the conditions of this Section 1.2, if the Company shall receive at any time after the earlier of (i) June 6, 2016 or (ii) six (6) months after the effective date of the Initial Offering, a written request from the Holders of fifty-one percent
(51%) or more of the Registrable Securities then outstanding (for purposes of this Section 1.2, the “Initiating Holders”) that the Company file a registration statement under the Act covering the registration of Registrable Securities, then the Company shall, within twenty (20) days of the receipt thereof, give written notice of such request to all Holders, and subject to the limitations of this Section 1.2, use all commercially reasonable efforts to effect, as soon as practicable, the registration under the Act of all Registrable Securities that the Holders request to be registered in a written request received by the Company within twenty (20) days of the mailing of the Company’s notice pursuant to this Section 1.2(a).

(b) If 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 this Section 1.2 and the Company shall include such information in the written notice referred to in Section 1.2(a). In such event the right of any Holder to include its 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 (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder) to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by a majority in interest of the Initiating Holders (which underwriter or underwriters shall be reasonably acceptable to the Company). Notwithstanding any other provision of this Section 1.2, if the underwriter advises the Company that marketing factors require a limitation on the number of securities underwritten (including Registrable Securities), then the Company shall so advise all Holders of Registrable Securities that would otherwise be underwritten pursuant hereto, and the number of shares that may be included in the underwriting shall be allocated to the Holders of such Registrable Securities pro rata based on the number of Registrable Securities held by all such Holders (including the Initiating Holders). In no event shall any Registrable Securities be excluded from such underwriting unless all other securities are first excluded. Any Registrable Securities excluded or withdrawn from such underwriting shall be withdrawn from the registration. If the underwriter has not limited the number of Registrable Securities to be underwritten, the Company may include securities for its own account in such registration if the underwriter so agrees and if the number of Registrable Securities which would otherwise have been included in such registration and underwriting will not thereby be limited.

(c) Notwithstanding the foregoing, the Company shall not be required to effect a registration pursuant to this Section 1.2:

   (i) in any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, unless the Company is already subject to service in such jurisdiction and except as may be required under the Act; or

   (ii) after the Company has effected two (2) registrations pursuant to this Section 1.2, and such registrations have been declared or ordered effective; or
(iii) during the period starting with the date sixty (60) days prior to the Company’s good faith estimate of the date of the filing of and ending on a date one hundred eighty (180) days following the effective date of a Company-initiated registration subject to Section 1.3 below, provided that the Company is actively employing in good faith all commercially reasonable efforts to cause such registration statement to become effective; or

(iv) if the Initiating Holders propose to dispose of Registrable Securities that may be registered on Form S-3 pursuant to Section 1.4 hereof; or

(v) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 1.2 a certificate signed by the Company’s Chief Executive Officer or Chairman of the Board stating that in the good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its stockholders for such registration statement to be effected at such time, in which event the Company shall have the right to defer such filing for a period of not more than one hundred twenty (120) days after receipt of the request of the Initiating Holders, provided that such right shall be exercised by the Company not more than once in any twelve (12)-month period and provided further that the Company shall not register any securities for the account of itself or any other stockholder during such one hundred twenty (120) day period (other than a registration relating solely to the sale of securities of participants in a Company stock plan, a registration relating to a corporate reorganization or transaction under Rule 145 of the Act, 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 a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered).

1.3 Company Registration.

(a) If (but without any obligation to do so) the Company proposes to register (including for this purpose a registration effected by the Company for stockholders other than the Holders) any of its stock or other securities under the Act in connection with the public offering of such securities (other than a registration relating solely to the sale of securities of participants in a Company stock plan, a registration relating to a corporate reorganization or transaction under Rule 145 of the Act, 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 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 Company shall, at such time, promptly give each Holder written notice of such registration. Upon the written request of each Holder given within twenty (20) days after mailing of such notice by the Company in accordance with Section 3.5, the Company shall, subject to the provisions of Section 1.3(c), use all commercially reasonable efforts to cause to be registered under the Act all of the Registrable Securities that each such Holder requests to be registered.

(b) Right to Terminate Registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 1.3 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration. The expenses of such withdrawn registration shall be borne by the Company in accordance with Section 1.7 hereof.
(c) Underwriting Requirements. In connection with any offering involving an underwriting of shares of the Company’s capital stock, the Company shall not be required under this Section 1.3 to include any of the Holders’ securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters selected by the Company (or by other persons entitled to select the underwriters) and enter into an underwriting agreement in customary form with such underwriters, and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Company. If the total amount of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the amount of securities sold other than by the Company that the underwriters determine in their sole discretion 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, that the underwriters determine in their sole discretion will not jeopardize the success of the offering, and such limitation will be imposed as follows: first, the securities held by any holder of Common Stock not having any such contractual, incidental registration rights shall be excluded from such registration to the extent required by such underwriter, and if a limitation on the number of shares is still required, then shares of Common Stock of the Company held by the Key Holders, directors and employees of the Company shall be excluded from such registration to the extent required by such underwriter, and if a limitation on the number of shares is still required, then Registrable Securities (other than those already excluded above) shall be excluded from registration to the extent required by such underwriter on a pro rata basis (based upon the number of Registrable Securities then held) among all holders of Registrable Securities. In the event that 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 apportioned pro rata among the selling Holders based on the number of Registrable Securities held by all selling Holders or in such other proportions as shall mutually be agreed to by all such selling Holders. For purposes of the preceding sentence concerning apportionment, for any selling stockholder that is a Holder of Registrable Securities and that is a venture capital fund, partnership or corporation, the affiliated venture capital funds, partners, retired partners and stockholders of such Holder, or the estates and family members of any such partners and retired partners 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 amount of Registrable Securities owned by all such related entities and individuals.

1.4 Form S-3 Registration. In case the Company shall receive from the Holders of at least ten percent (10%) of the Registrable Securities (for purposes of this Section 1.4, the “Initiating Holders”) a written request or requests that the Company effect a registration on Form S-3 and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company shall:

(a) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders; and

(b) use all commercially reasonable efforts to effect, as soon as practicable, such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holders’
Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holders joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from the Company, provided, however, that the Company shall not be obligated to effect any such registration, qualification or compliance, pursuant to this section 1.4:

(i) if Form S-3 is not available for such offering by the Holders;

(ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public (net of any underwriters’ discounts or commissions) of less than $5,000,000;

(iii) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 1.4 a certificate signed by the Company’s Chief Executive Officer or Chairman of the Board stating that in the good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its stockholders for such registration statement to be effected at such time, in which event the Company shall have the right to defer such filing for a period of not more than one hundred twenty (120) days after receipt of the request of the Initiating Holders, provided that such right shall be exercised by the Company not more than once in any twelve (12)-month period and provided further that the Company shall not register any securities for the account of itself or any other stockholder during such one hundred twenty (120) day period (other than a registration relating solely to the sale of securities of participants in a Company stock plan, a registration relating to a corporate reorganization or transaction under Rule 145 of the Act, 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 a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered);

(iv) if the Company has, within the twelve (12) month period preceding the date of such request, already effected two (2) registrations on Form S-3 for the Holders pursuant to this Section 1.4; or

(v) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance.

(c) If 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 this Section 1.4 and the Company shall include such information in the written notice referred to in Section 1.4(a). The provisions of Section 1.2(b) shall be applicable to such request (with the substitution of Section 1.4 for references to Section 1.2).
(d) Subject to the foregoing, the Company shall file a registration statement covering the Registrable Securities and other securities so requested to be registered as soon as practicable after receipt of the request or requests of the Initiating Holders. Registrations effected pursuant to this Section 1.4 shall not be counted as requests for registration effected pursuant to Sections 1.2.

1.5 Obligations of the Company. Whenever required under this Section 1 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 all commercially reasonable efforts to cause such registration statement to become effective, 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;

(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 provisions of the Act with respect to the disposition of all securities covered by such registration statement;

(c) furnish to the Holders such number of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them;

(d) use all 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 Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

(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 managing underwriter of such offering;

(f) notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(g) cause all such Registrable Securities registered pursuant to this Section 1 to be listed on a national exchange or trading system and on each securities exchange and trading system on which similar securities issued by the Company are then listed; and
Notwithstanding the provisions of this Section 1, the Company shall be entitled to postpone or suspend, for a reasonable period of time, the filing, effectiveness or use of, or trading under, any registration statement if the Company shall determine that any such filing or the sale of any securities pursuant to such registration statement would in the good faith judgment of the Board of Directors of the Company:

(i) materially impede, delay or interfere with any material pending or proposed financing, acquisition, corporate reorganization or other similar transaction involving the Company for which the Board of Directors of the Company has authorized negotiations;

(ii) materially adversely impair the consummation of any pending or proposed material offering or sale of any class of securities by the Company; or

(iii) require disclosure of material nonpublic information that, if disclosed at such time, would be materially harmful to the interests of the Company and its stockholders; provided, however, that during any such period all executive officers and directors of the Company are also prohibited from selling securities of the Company (or any security of any of the Company’s subsidiaries or affiliates).

In the event of the suspension of effectiveness of any registration statement pursuant to this Section 1.5, the applicable time period during which such registration statement is to remain effective shall be extended by that number of days equal to the number of days the effectiveness of such registration statement was suspended.

1.6 Information from Holder. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 1 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 shall be reasonably required to effect the registration of such Holder’s Registrable Securities.

1.7 Expenses of Registration. All expenses other than underwriting discounts and commissions incurred in connection with registrations, filings or qualifications pursuant to Sections 1.2, 1.3 and 1.4, including (without limitation) all registration, filing and qualification fees, printers’ and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of one counsel for the selling Holders (not to exceed $25,000) shall be borne by the Company. Notwithstanding the foregoing, the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 1.2 or Section 1.4 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 participating Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration), unless, in the case of a
registration requested under Section 1.2, the Holders of a majority of the Registrable Securities agree to forfeit their right to one demand registration pursuant to Section 1.2 and provided, however, that if at the time of such withdrawal, the Holders 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 following disclosure by the Company of such material adverse change, then the Holders shall not be required to pay any of such expenses and shall retain their rights pursuant to Section 1.2 and 1.4.

1.8 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 1.

1.9 Indemnification. In the event any Registrable Securities are included in a registration statement under this Section 1:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, the partners, officers, directors and stockholders of each Holder, legal counsel and accountants for each Holder, any underwriter (as defined in the Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Act or the 1934 Act, against any losses, claims, damages or liabilities (joint or several) to which they may become subject under the Act, the 1934 Act, any state securities laws or any rule or regulation promulgated under the Act, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a “Violation”: (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state in such registration statement 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 Company of the Act, the 1934 Act, any state securities laws or any rule or regulation promulgated under the Act, the 1934 Act or any state securities laws, and the Company will reimburse each such Holder, underwriter, controlling person or other aforementioned person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the indemnity agreement contained in this subsection 1.9(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable in any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon a Violation that occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any such Holder, underwriter, controlling person or other aforementioned person; provided further, however, that the foregoing indemnity agreement with respect to any preliminary prospectus shall not inure to the benefit of any Holder or underwriter or other aforementioned person, or any person controlling such Holder or underwriter, from whom the person asserting any such losses, claims, damages or liabilities purchased shares in the offering, if a copy of the most current prospectus was not sent or given by or on behalf of such Holder or underwriter or other aforementioned person to such person, if
required by law to have been so delivered, at or prior to the written confirmation of the sale of the shares to such person, and if the prospectus (as so amended or supplemented) would have cured the defect giving rise to such loss, claim, damage or liability.

(b) To the extent permitted by law, each selling Holder will indemnify and hold harmless the Company, 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 Act, legal counsel and accountants for the Company, any underwriter, any other Holder selling securities in such registration statement and any controlling person of any such underwriter or other Holder, against any losses, claims, damages or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Act, the 1934 Act, any state securities laws or any rule or regulation promulgated under the Act, the 1934 Act or any state securities laws, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration; and each such Holder will reimburse any person intended to be indemnified pursuant to this subsection 1.9(b) for any legal or other expenses reasonably incurred by such person in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the indemnity agreement contained in this subsection 1.9(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder (which consent shall not be unreasonably withheld), and provided that in no event shall any indemnity under this subsection 1.9(b) exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 1.9 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 1.9, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, 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 proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 1.9 to the extent of such prejudice, but the omission to so deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party other than under this Section 1.9.

(d) If the indemnification provided for in this Section 1.9 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to herein, then the indemnifying party, in
lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party on the other hand in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense, as well as any other relevant equitable considerations; provided, however, that no contribution by any Holder, when combined with any amounts paid by such Holder pursuant to Section 1.9(b), shall exceed the net proceeds from the offering received by such Holder. The relative fault of the indemnifying party and the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state 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.

(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) The obligations of the Company and Holders under this Section 1.9 shall survive the completion of any offering of Registrable Securities in a registration statement under this Section 1 and otherwise.

1.10 Reports Under the 1934 Act. With a view to making available to the Holders the benefits of 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 agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after the effective date of the Initial Offering;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Act and the 1934 Act; and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144 (at any time after ninety (90) days after the effective date of the first registration statement filed by the Company), the Act and the 1934 Act (at any time after it 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 it 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 to avail any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration or pursuant to such form.
1.11 Assignment of Registration Rights. The rights to cause the Company to register Registrable Securities pursuant to this Section 1 may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such securities that (i) is a subsidiary, parent, partner, limited partner, retired partner or stockholder of a Holder, (ii) is a Holder’s family member or trust for the benefit of an individual Holder, or (iii) after such assignment or transfer, holds at least 250,000 shares of Registrable Securities (subject to appropriate adjustment for stock splits, stock dividends, combinations or the like), provided: (a) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; (b) such transferee or assignee agrees in writing to be bound by and subject to the terms and conditions of this Agreement, including, without limitation, the provisions of Section 1.13 below; and (c) such assignment shall be effective only if immediately following such transfer the further disposition of such securities by the transferee or assignee is restricted under the Act.

1.12 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of a majority of the Registrable Securities, enter into any agreement with any holder or prospective holder of any securities of the Company that would allow such holder or prospective holder (a) to include any of such securities in any registration filed under Section 1.2, Section 1.3 or Section 1.4 hereof, 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 amount of the Registrable Securities of the Holders that are included (provided that the Company may grant “piggyback” registration rights upon approval of such grant by the unanimous consent of the Board of Directors of the Company) or (b) to demand registration of their securities.

1.13 “Market Stand-Off” Agreement.

(a) 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 Company’s Initial Offering 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 (x) the publication or other distribution of research reports and (y) analyst recommendations and opinions, including, but not limited to, the restrictions contained in NASD Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto) (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 for Common Stock held immediately prior to the effectiveness of the Registration Statement for such offering, 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 the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise. The foregoing provisions of this Section 1.13 shall apply only to the Company’s initial offering of equity securities, 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, directors and greater than one percent (1%) stockholders of the Company enter into similar agreements. The underwriters in connection with the Company’s Initial Offering are intended third-party beneficiaries of this Section 1.13 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereeto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in the Company’s Initial Offering that are consistent with this Section 1.13 or that are necessary to give further effect thereto. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters shall apply to all Holders subject to such agreements pro rata based on the number of shares subject to such agreements.

In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the Registrable Securities of each Holder (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period.

(b) Each Holder agrees that a legend reading substantially as follows shall be placed on all certificates representing all Registrable Securities of each Holder (and the shares or securities of every other person subject to the restriction contained in this Section 1.13):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A LOCK-UP PERIOD OF UP TO 180 DAYS AFTER THE EFFECTIVE DATE OF THE ISSUER’S REGISTRATION STATEMENT FILED UNDER THE ACT, AS AMENDED, AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE ORIGINAL HOLDER OF THESE SECURITIES, A COPY OF WHICH MAY BE OBTAINED AT THE ISSUER’S PRINCIPAL OFFICE. SUCH LOCK-UP PERIOD IS BINDING ON TRANSFEREES OF THESE SHARES.

1.14 Termination of Registration Rights. No Holder shall be entitled to exercise any right provided for in this Section 1 (i) after five (5) years following the consummation of the Initial Offering, (ii) as to any Holder holding less than one percent (1%) of the outstanding capital stock of the Company (on an as-converted basis), such time after the Initial Offering at which such Holder (together with any affiliate of the Holder with whom such Holder must aggregate its sales under Rule 144) can sell all Registrable Securities held by such Holder in any three (3)-month period without registration in compliance with Rule 144 or (iii) after the consummation of a Liquidation Event, as that term is defined in the Company’s Amended and Restated Certificate of Incorporation (as amended from time to time).
2. Covenants of the Company

2.1 Delivery of Financial Statements. The Company shall, upon request, deliver to each Investor (or transferee of an Investor) that holds at least 500,000 shares of Registrable Securities (subject to appropriate adjustment for stock splits, stock dividends, combinations or the like) (a “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, an income statement for such fiscal year, a balance sheet of the Company and statement of stockholders’ equity as of the end of such year, and a statement of cash flows for such year, such year-end financial reports to be in reasonable detail, prepared in accordance with generally accepted accounting principles (“GAAP”), and 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, an unaudited income statement, statement of cash flows for such fiscal quarter and an unaudited balance sheet as of the end of such fiscal quarter.

(c) within thirty (30) days of the end of each month, an unaudited income statement and statement of cash flows and balance sheet for and as of the end of such month, in reasonable detail;

(d) as soon as practicable, but in any event at least thirty (30) days prior to the end of each fiscal year, a budget and business plan for the next fiscal year, prepared on a monthly basis, including balance sheets, income statements and statements of cash flows for such months and, as soon as prepared, any other budgets or revised budgets prepared by the Company;

(e) with respect to the financial statements called for in subsections (b) and (c) of this Section 2.1, an instrument executed by the Chief Financial Officer or President of the Company certifying that such financials were prepared in accordance with GAAP consistently applied with prior practice for earlier periods (with the exception of footnotes that may be required by GAAP) and fairly present the financial condition of the Company and its results of operation for the period specified, subject to year-end audit adjustment; provided, that the President or Chief Financial Officer of the Company may rely upon the advice of third parties in connection with furnishing such certifying instrument; and

(f) such other information relating to the financial condition, business or corporate affairs of the Company as the Major Investor may from time to time request, provided, however, that the Company shall not be obligated under this subsection (f) or any other subsection of Section 2.1 to provide information that it deems in good faith to be a trade secret or similar confidential information.

2.2 Inspection. The Company shall permit each Major Investor, at such Major Investor’s expense, to visit and inspect the Company’s properties, to examine its books of account and records and to discuss the Company’s affairs, finances and accounts with its officers, all at such reasonable times as may be requested by the Major Investor; provided, however, that the Company shall not be obligated pursuant to this Section 2.2 to provide access to any information that it reasonably considers to be a trade secret or similar confidential information.
2.3 Termination of Information and Inspection Covenants. The covenants set forth in Sections 2.1 and 2.2 shall terminate and be of no further force or effect upon the earlier to occur of (i) the consummation of the sale of securities pursuant to a registration statement filed by the Company under the Act in connection with the firm commitment underwritten offering of its securities to the general public, (ii) when the Company first becomes subject to the periodic reporting requirements of Sections 12(g) or 15(d) of the 1934 Act, whichever event shall first occur or (iii) the consummation of a Liquidation Event, as that term is defined in the Company’s Amended and Restated Certificate of Incorporation (as amended from time to time).

2.4 Right of First Offer. Subject to the terms and conditions specified in this Section 2.4, the Company hereby grants to each Major Investor and Key Holder (the “Rights Holders”), a right of first offer with respect to future sales by the Company of its Shares (as hereinafter defined). For purposes of this Section 2.4, the term “Major Investor” includes any general partners and affiliates of a Major Investor. A Rights Holder shall be entitled to apportion the right of first offer hereby granted it among itself and its partners and affiliates in such proportions as it deems appropriate.

Each time the Company proposes to offer any shares of, or securities convertible into or exchangeable or exercisable for any shares of, its capital stock (“Shares”), the Company shall first make an offering of such Shares to each Rights Holder in accordance with the following provisions:

(a) The Company shall deliver a notice in accordance with Section 3.5 (“Notice”) to the Rights Holders stating (i) its bona fide intention to offer such Shares, (ii) the number of such Shares to be offered and (iii) the price and terms upon which it proposes to offer such Shares.

(b) By written notification received by the Company within fifteen (15) calendar days after the giving of Notice, each Rights Holder may elect to purchase, at the price and on the terms specified in the Notice, up to that portion of such Shares that equals the proportion that the number of shares of Common Stock that are Registrable Securities issued and held by such Rights Holder (assuming full conversion and exercise of all convertible and exercisable securities then outstanding) bears to the total number of shares of Common Stock of the Company then outstanding (assuming full conversion and exercise of all convertible and exercisable securities then outstanding). The Company shall promptly, in writing, inform each Rights Holder that elects to purchase all the shares available to it (a “Fully-Exercising Investor”) of any other Rights Holder’s failure to do likewise. During the ten (10) day period commencing after such information is given, each Fully-Exercising Investor may elect to purchase that portion of the Shares for which Rights Holders were entitled to subscribe, but which were not subscribed for by the Rights Holders, that is equal to the proportion that the number of shares of Registrable Securities issued and held by such Fully-Exercising Investor bears to the total number of shares of Common Stock issued and held, or issuable upon conversion of the Preferred Stock then held, by all Fully-Exercising Investors who wish to purchase some of the unsubscribed shares.
If all Shares that Rights Holders are entitled to obtain pursuant to subsection 2.4(b) are not elected to be obtained as provided in subsection 2.4(b) hereof, the Company may, during the ninety (90) day period following the expiration of the period provided in subsection 2.4(b) hereof, offer the remaining unsubscribed portion of such Shares to any person or persons at a price not less than that, and upon terms no more favorable to the offeree than those, specified in the Notice. If the Company does not enter into an agreement for the sale of the Shares within such period, or if such agreement is not consummated within sixty (60) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such Shares shall not be offered unless first reoffered to the Rights Holders in accordance herewith.

(d) The right of first offer in this Section 2.4 shall not be applicable to (i) the issuance or sale of shares of Common Stock (or options therefor) to employees, directors, consultants and other service providers for the primary purpose of soliciting or retaining their services pursuant to plans or agreements approved by the Company’s Board of Directors including with respect to any plans (or amendments thereto) adopted after the date hereof, two directors elected solely by any of the holders of Series A-1 Preferred Stock, the holders of Series B Preferred Stock or the holders of Series D Preferred Stock (each a “Preferred Director” and collectively the “Preferred Directors”); (ii) the issuance of securities pursuant to a bona fide, firmly underwritten public offering of shares of Common Stock registered under the Act, (iii) the issuance of securities pursuant to the conversion or exercise of convertible or exercisable securities, (iv) the issuance of securities in connection with a bona fide business acquisition of or by the Company, whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise, that is approved by the Company’s board of directors, (v) the issuance and sale of Series D Preferred Stock pursuant to the Series D Agreement or (vi) the issuance of stock, warrants or other securities or rights to persons or entities with which the Company has business relationships, provided such issuances are primarily for other than equity financing purposes and are approved by the Company’s board of directors. In addition to the foregoing, the right of first offer in this Section 2.4 shall not be applicable with respect to any Rights Holders in any subsequent offering of Shares if (i) at the time of such offering, the Rights Holders is not an “accredited investor,” as that term is then defined in Rule 501(a) of the Act and (ii) such offering of Shares is otherwise being offered only to accredited investors.

(e) The rights provided in this Section 2.4 may not be assigned or transferred by any Rights Holder; provided, however, that a Rights Holder that is a venture capital fund may assign or transfer such rights to an affiliate of such Rights Holder (including an affiliated venture capital fund, partner, partnership or other entity of which any affiliate of such Rights Holder is a general partner or has investment discretion, or any employee of any of the foregoing) if such transferee agrees to become a party to and be bound by this Agreement.

(f) The covenants set forth in this Section 2.4 shall terminate and be of no further force or effect upon the consummation of (i) the Company’s sale of its Common Stock or other securities pursuant to a firm commitment underwritten public offering pursuant to an effective Registration Statement under the Act (other than a registration statement relating either to the sale of securities to employees of the Company pursuant to its stock option, stock purchase or similar plan or a SEC Rule 145 transaction) or (ii) a Liquidation Event, as that term is defined in the Company’s Amended and Restated Certificate of Incorporation (as amended from time to time).
2.5 Proprietary Information and Inventions Agreements. The Company shall require all employees and consultants with access to confidential information to execute and deliver a Proprietary Information and Inventions Agreement in substantially the form approved by the Company’s Board of Directors.

2.6 Employee Agreements. Unless approved by the Board of Directors of the Company, including at least two of the Preferred Directors, all future employees of the Company who shall purchase, or receive options to purchase, shares of the Company’s Common Stock following the date hereof shall be required to execute stock purchase or option agreements providing for (i) vesting of shares over a four-year period with the first 25% of such shares vesting following twelve (12) months of continued employment or services, and the remaining shares vesting in equal monthly installments over the following 36 months thereafter and (ii) a 180-day lockup period in connection with the Company’s initial public offering. The Company shall retain a right of first refusal on transfers until the Company’s initial public offering and the right to repurchase unvested shares at cost.

2.7 Board Matters. The approval of the Board of Directors of the Company, including, solely for subsections (a) through (h), at least two of the Preferred Directors, shall be required to:

(a) expend with respect to any one item or in a single transaction more than $500,000, except for purchase orders entered into in the ordinary course of business;

(b) grant any equity incentive grants that include acceleration of vesting provisions;

(c) increase the number of shares reserved under the Company’s equity incentive plans;

(d) transact any business between the Company and its affiliates or their family members (other than transactions previously disclosed to the Preferred Directors);

(e) make, or permit any subsidiary to make, any loan or advance to, or own any stock or other securities of, any subsidiary or other corporation, partnership, or other entity unless it is wholly owned by the Company;

(f) make, or permit any subsidiary to make, any loan or advance to any person, including, without limitation, any employee or director of the Company or any subsidiary, except advances and similar expenditures in the ordinary course of business or under the terms of an employee stock or option plan approved by the Board of Directors;

(g) guarantee, directly or indirectly, or permit any subsidiary to guarantee, directly or indirectly, any indebtedness except for trade accounts of the Company or any subsidiary arising in the ordinary course of business;
(h) incur any aggregate indebtedness in excess of $500,000 that is not already included in a budget approved by the Board of Directors, other than trade credit incurred in the ordinary course of business;

(i) hire, terminate, or materially change the compensation of the president, chief executive officer, chief financial officer, chief operations officer, chief technology officer and chief revenue officer, including approving any option grants or stock awards to such officers;

(j) materially change the overall principal business of the Company; or

(k) sell, assign, license, pledge, or encumber material technology or intellectual property, other than licenses granted in the ordinary course of business.

2.8 Termination of Certain Covenants. The covenants set forth in Sections 2.5, 2.6 and 2.7 shall terminate and be of no further force or effect upon the consummation of (i) the Company’s sale of its Common Stock or other securities pursuant to a firm commitment underwritten public offering pursuant to an effective Registration Statement under the Act (other than a registration statement relating either to the sale of securities to employees of the Company pursuant to its stock option, stock purchase or similar plan or a SEC Rule 145 transaction) or (ii) a Liquidation Event, as that term is defined in the Company’s Amended and Restated Certificate of Incorporation (as amended from time to time).

3. Miscellaneous

3.1 Successors and Assigns. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any shares of Registrable Securities). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

3.2 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware as applied to agreements among Delaware residents entered into and to be performed entirely within Delaware.

3.3 Counterparts. This Agreement may be executed 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.

3.4 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.
3.5 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the 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) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the addresses set forth on the signature pages attached hereto (or at such other addresses as shall be specified by notice given in accordance with this Section 3.5).

3.6 Expenses. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

3.7 Entire Agreement; Amendments and Waivers. This Agreement (including the Exhibits hereto, if any) constitutes the full and entire understanding and agreement among the parties with regard to the subjects hereof and thereof. Any term of this Agreement (other than Section 2.1, Section 2.2, Section 2.3 and Section 2.4) 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 holders of a majority of the Registrable Securities held by the Investors. The provisions of Section 2.1, Section 2.2, Section 2.3 and Section 2.4 may be amended or waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and the holders of a majority of the Registrable Securities that are held by Major Investors, and with respect to Section 2.4, a majority of the Registrable Securities that are held by Key Holders. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Registrable Securities, each future holder of all such Registrable Securities, and the Company. Notwithstanding the foregoing, 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 a similar position (with respect to series or class of stock) in the same fashion (it being agreed that a waiver of the provisions of Section 2 with respect to a particular transaction shall be deemed to apply to all Investors in the same fashion if such waiver does so by its terms, notwithstanding the fact that certain Investors may nonetheless, by agreement with the Company, purchase securities in such transaction). Further, this Agreement may not be amended, and no provision hereof may be waived, in each case, in any way which would adversely affect the rights of the Key Holders hereunder in a manner disproportionate to any adverse effect such amendment or waiver would have on the rights of the Investors hereunder, without also the written consent of the holders of at least a majority of the Registrable Securities held by the Key Holders. The Original Agreement is hereby terminated and shall be of no further force or effect. The Investors do hereby waive the provisions of Section 2.4 of the Original Agreement as they apply to notice of and issuance of Series D Preferred Stock pursuant to the Series D Agreement (and the shares of Common Stock issuable upon conversion of such Series D Preferred Stock). 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. No waivers of 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 or any such term, condition, or provision.

3.8 **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

3.9 **Aggregation of Stock.** All shares of Registrable Securities held or acquired by affiliated entities (including affiliated venture capital funds) or persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

3.10 **Additional Investors.** Notwithstanding Section 3.7, no consent shall be necessary to add additional Investors as signatories to this Agreement, provided that such Investors have purchased Series D Preferred Stock pursuant to the subsequent closing provisions of Section 1.3 of the Series D Agreement.

3.11 **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 3.11 by such Investor), (b) is or has been independently developed or conceived by the Investor without use of the Company’s confidential information, or (c) 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) 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 3.11; (iii) to any existing or prospective affiliate, partner, member, stockholder, or wholly owned subsidiary of such Investor if such Investor informs such person that such information is confidential and directs such person to maintain the confidentiality of such information; (iv) as may otherwise be required by law, provided that the Investor promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure; or (v) an Investor may include summary financial information concerning the Company and general statements concerning the nature and progress of the Company’s business in an Investor’s reports to its limited partners or equity owners.
IN WITNESS WHEREOF, the parties have executed this Third Amended and Restated Investors’ Rights Agreement as of the date first above written.

FITBIT, INC.

By: /s/ James Park
Name: James Park
Title: President

Address: 150 Spear St.
        San Francisco, CA 94105

SIGNATURE PAGE TO THIRD A&R INVESTOR RIGHTS AGREEMENT
FOR FITBIT, INC.
INVESTORS:

SoftBank PrinceVille Investments, L.P.
By: SB PV GP L.P., its General Partner
By: SB PV GP LLC, its General partner

By: /s/ Steven J. Murray
Name: Steven J. Murray
Title: Managing Member

Address: 38 Glen Avenue
Newton, MA 02459
INVESTORS:

SAP VENTURES FUND I, L.P.

By: SAP VENTURES (GPE) I, LLC
    Its General Partner

By: /s/ David Hartwig
    Name: David Hartwig
    Title: Managing Member

By: SAP VENTURES (GPE) I, LLC
    Its General Partner

By: /s/ R. Douglas Higgins
    Name: R. Douglas Higgins
    Title: Managing Member

Address: 3412 Hillview Avenue,
         Palo Alto, California USA 94304

SIGNATURE PAGE TO THIRD A&R INVESTOR RIGHTS AGREEMENT
FOR FITBIT, INC.
INVESTORS:

TRUE VENTURES II, L.P.,
for itself and as nominee for other entities

By: True Ventures Partners II, L.L.C.,
its general partner

By: /s/ Jon Callaghan
Name: Jon Callaghan
Title: Managing Member

Address: 530 Lytton Avenue, Suite 303
Palo Alto, CA 94301
INVESTORS:

FOUNDRY VENTURE CAPITAL 2007, L.P.

By: Foundry Venture 2007, LLC,
its general partner

By: /s/ Brad Feld
Name: Brad Feld
Title: Managing Member

Address: 1050 Walnut Street, Suite 210
Boulder, CO 80302

SIGNATURE PAGE TO THIRD A&R INVESTOR RIGHTS AGREEMENT
FOR FITBIT, INC.
INVESTORS:

QUALCOMM INCORPORATED

By:               /s/ Adam Schwenker
                  (Signature)

Name:        Adam Schwenker
Title:         Vice President & Legal Counsel

Address:
ATTN: Qualcomm Ventures
5775 Morehouse Drive
San Diego, CA 92121

SIGNATURE PAGE TO THIRD A&R INVESTOR RIGHTS AGREEMENT FOR FITBIT, INC.
INVESTORS:

Foundry Group Select Fund, LP
By: Foundry Select Fund GP, LLC

By: /s/ Brad Feld
   (Signature)

Name: Brad Feld
Title: Managing Director

Address:
c/o Foundry Group
1050 Walnut Street, Suite 210
Boulder, CO 80302
Attn: Brad Feld

SIGNATURE PAGE TO THIRD A&R INVESTOR RIGHTS AGREEMENT
FOR FITBIT, INC.
INVESTORS:

Little Harbour SAZ, LLC

By: /s/ Michael Barry
Name: Michael Barry
Title: Manager

Address:
2490 Gordon Drive
Naples, FL 34102
Attn: Michael Barry
KEY HOLDERS:

/s/ James Park
James Park

Eric Friedman

SIGNATURE PAGE TO THIRD A&R INVESTOR RIGHTS AGREEMENT FOR FITBIT, INC.
KEY HOLDERS:

James Park

/s/ Eric Friedman

Eric Friedman

SIGNATURE PAGE TO THIRD A&R INVESTOR RIGHTS AGREEMENT FOR FITBIT, INC.
SoftBank PrinceVille Investments, L.P.
SAP Ventures Fund I, L.P.
True Ventures II, L.P.
Foundry Venture Capital 2007, L.P.
QUALCOMM Incorporated
Foundry Group Select Fund, LP
Little Harbour SAZ, LLC
SoftTech VC II, L.P.
SoftTech VC III, L.P.
Gokhan Kutlu
Felicis Ventures II, L.P.
Shelby Bonnie
Seth Sternberg
Cameron Ring
Todd Masonis
Jonathan Roosevelt
WARRANT TO PURCHASE STOCK

Company: FITBIT, INC., a Delaware corporation
Number of Shares: 23,166
Class of Stock: Series B Preferred
Warrant Price: $2.58961 per share
Issue Date: June 10, 2011
Expiration Date: The 7th anniversary after the Issue Date
Credit Facility: This Warrant is issued in connection with the Growth Capital Advances referenced in the Loan and Security Agreement between Company and Silicon Valley Bank dated of even date herewith.

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, SILICON VALLEY BANK (Silicon Valley Bank, together with any registered holder from time to time of this Warrant or any holder of the shares issuable or issued upon exercise of this Warrant, “Holder”) is entitled to purchase the number of fully paid and nonassessable shares of the class of securities (the “Shares”) of the Company at the Warrant Price, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this Warrant by delivering a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, 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.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Article 1.1, Holder may from time to time convert this Warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the Shares or other securities otherwise issuable upon exercise of this Warrant minus the aggregate Warrant Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be determined pursuant to Article 1.3.
1.3 Fair Market Value. If the Company’s common stock is traded in a public market and the Shares are common stock, the fair market value of each Share shall be the closing price of a Share reported for the business day immediately before Holder delivers its Notice of Exercise to the Company (or in the instance where the Warrant is exercised immediately prior to the effectiveness of the Company’s initial public offering, the “price to public” per share price specified in the final prospectus relating to such offering). If the Company’s common stock is traded in a public market and the Shares are preferred stock, the fair market value of a Share shall be the closing price of a share of the Company’s common stock reported for the business day immediately before Holder delivers its Notice of Exercise to the Company (or, in the instance where the Warrant is exercised immediately prior to the effectiveness of the Company’s initial public offering, the initial “price to public” per share price specified in the final prospectus relating to such offering), in both cases, multiplied by the number of shares of the Company’s common stock into which a Share is convertible. If the Company’s common stock is not traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant and, if applicable, 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 or converted and has not expired, a new Warrant representing the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation or surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 “Acquisition”. For the purpose of this Warrant, “Acquisition” means any sale of all or substantially all of the assets of the Company, or any reorganization, consolidation, or merger of the Company where the holders of the Company’s securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction.

1.6.2 Treatment of Warrant at Acquisition.

A) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition that is not an asset sale and in which the sole consideration is cash, either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Acquisition. The Company shall provide Holder with written notice of its request relating to the foregoing (together with such reasonable information as Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than ten (10) days prior to the closing of the proposed Acquisition.
B) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition that is an “arms length” sale of all or substantially all of the Company’s assets (and only its assets) to a third party that is not an Affiliate (as defined below) of the Company (a “True Asset Sale”), either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will continue until the Expiration Date if the Company continues as a going concern following the closing of any such True Asset Sale. The Company shall provide Holder with written notice of its request relating to the foregoing (together with such reasonable information as Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

C) Upon the closing of any Acquisition other than those particularly described in subsections (A) and (B) above, the successor entity shall assume the obligations of this Warrant, and 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 and/or number of Shares shall be adjusted accordingly.

As used herein “Affiliate” shall mean any person or entity that owns or controls directly or indirectly ten (10) percent or more of the stock of Company, any person or entity that controls or is controlled by or is under common control with such persons or entities, and each of such person’s or entity’s officers, directors, joint venturers or partners, as applicable.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the Shares payable in common stock, or other securities, 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 occurred. If the Company subdivides the Shares by reclassification or otherwise into a greater number of shares or takes any other action which increase the amount of stock into which the Shares are convertible, the number of shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations 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 an amendment to this Warrant setting forth the number and kind of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, substitution or other event that results in a change of the number and/or class of securities issuable upon exercise or conversion of this Warrant. The amendment to this 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 and to the number of securities or property issuable upon exercise of the new Warrant. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Adjustments for Diluting Issuances. The Warrant Price and the number of Shares issuable upon exercise of this Warrant or, if the Shares are preferred stock, the number of shares of common stock issuable upon conversion of the Shares, shall be subject to adjustment, from time to time in the manner set forth in the Company’s Certificate of Incorporation as if the Shares were issued and outstanding on and as of the date of any such required adjustment. 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 Holder.

In the event that any “pay-to-play” terms or conditions (i.e. terms or conditions that require a holder of the Company’s preferred stock to purchase securities in a future round of equity financing or else lose the benefit of antidilution protection applicable to the shares of preferred stock issuable upon exercise of this Warrant or have such shares of preferred stock automatically convert to common stock or convert to another class and series of the Company’s capital stock) in the Certificate of Incorporation, or other agreement among the Company and its stockholders are triggered in connection with the consummation of any private offering of securities of the Company after the Issue Date at a price per share lower than the Warrant Price then in effect (such offering being referred to herein as a “Down Round”) or otherwise after the date hereof, then in such event, this Warrant shall automatically adjust to become exercisable for the same securities and/or rights that Holder would have received had Holder participated in the Down Round to its full pro rata share with respect to the preferred stock issuable upon exercise of this Warrant (e.g., if the Warrant provides for the purchase of Series B Preferred Stock, and the Company after the Issue Date consummates a Down Round in which those holders of Series B Preferred Stock who participate to their full pro rata share in such Down Round become entitled to exchange Series B Preferred Stock for Series B-2 Preferred Stock and those holders of Series B Preferred Stock who do not participate to their full pro rata share will have their Series B Preferred Stock converted into common stock, then this Warrant would automatically adjust to provide the right to purchase Series B-2 Preferred Stock instead of common stock).
2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation 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.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion 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 or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Company shall promptly notify Holder in writing, and, at the Company’s expense, promptly compute such adjustment, and furnish Holder with a certificate of 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 in effect upon the date thereof and the series of adjustments leading to such Warrant Price.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to Holder as follows:

(a) The initial Warrant Price referenced on the first page of this Warrant is not greater than (i) the price per share at which the Shares were issued under the Stock Purchase Agreement dated as of which was the last issuance of Shares in an arms-length transaction in which at least $500,000 of the Shares were sold which was the last issuance of Shares.

(b) 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 and payment of the exercise price as provided hereunder, 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.

(c) The Company’s capitalization table attached hereto as Schedule 1 is true and correct 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 any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for sale any shares of the Company’s capital stock (or other securities convertible into such capital stock), other than (i) pursuant to the Company’s stock option or other compensatory plans, (ii) in connection with commercial credit arrangements or equipment financings, or (iii) in connection with strategic transactions for purposes other than capital raising; (c) to effect any reclassification or recapitalization of any of its stock; (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; or (e) offer holders of registration rights the opportunity to participate in an underwritten public
offering of the Company’s securities for cash, then, in connection with each such event, the Company shall give Holder: (1) at least 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 common 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; (2) in the case of the matters referred to in (c) and (d) above at least 10 days prior written notice of the date when the same will take place (and specifying the date on which the holders of common stock will be entitled to exchange their common stock for securities or other property deliverable upon the occurrence of such event); and (3) in the case of the matter referred to in (e) above, the same notice as is given to the holders of such registration rights. Company will also provide information requested by Holder reasonably necessary to enable Holder to comply with Holder’s accounting or reporting requirements.

3.3 Registration Under Securities Act of 1933, as amended. Subject to Section 5.11 below, the Company agrees that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall have (i) certain “piggyback” registration rights pursuant to and as set forth in the Company’s Investor Rights Agreement or similar agreement (as amended from time to time, the “Rights Agreement”), and (ii) to the extent allowable under the Rights Agreement, certain S-3 registration rights pursuant to and as set forth in the Rights Agreement. The provisions set forth in the Company’s Rights Agreement or similar agreement 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 Holder.

3.4 No Shareholder Rights. Except as provided in this Warrant, Holder will not have any rights as a shareholder of the Company until the exercise of this Warrant.

ARTICLE 4. REPRESENTATIONS, WARRANTIES OF HOLDER. Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder will be acquired for investment for Holder’s account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that Holder has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.
4.3 **Investment Experience**. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder’s investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 **Accredited Investor Status**. Holder is an “accredited investor” within the meaning of Regulation D promulgated under the Act.

4.5 **The Act**. Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Holder’s investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

**ARTICLE 5. MISCELLANEOUS**

5.1 **Term**. This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 **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 THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

5.3 **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 (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require
Silicon Valley Bank (“Bank”) to provide an opinion of counsel if the transfer is to Bank’s parent company, SVB Financial Group (formerly Silicon Valley Bancshares), or any other affiliate of Bank. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144(d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder’s notice of proposed sale.

5.4 Transfer Procedure. After receipt by Bank of the executed Warrant, Bank will transfer all of this Warrant to SVB Financial Group by execution of an Assignment substantially in the form of Appendix 2. Subject to the provisions of Article 5.3 and upon providing the Company with written notice, SVB Financial Group and any subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the Shares issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, SVB Financial Group or any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable). The Company may refuse to transfer this Warrant or the Shares to any person who directly competes with the Company, unless, in either case, the stock of the Company is publicly traded.

5.5 Notices. All notices and other communications from the Company to Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or Holder, as the case may (or on the first business day after transmission by facsimile) be, in writing by the Company or such Holder from time to time. Effective upon receipt of the fully executed Warrant and the initial transfer described in Article 5.4 above, all notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

SVB Financial Group  
Attn: Treasury Department  
3003 Tasman Drive, HA 200  
Santa Clara, CA 95054

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

Fitbit, Inc.  
Attn: Meena Srinivasan, VP  
625 Market Street, Suite 1400  
San Francisco, CA 94105
5.6 **Waiver.** This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 **Attorneys’ Fees.** In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys’ fees.

5.8 [Reserved].

5.9 **Counterparts.** This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

5.10 **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.

5.11 **Joiner.** Upon exercise of this Warrant and provided that the Rights Agreement is still in effect, the Company shall use its commercially reasonable efforts to cause the Rights Agreement to be amended so that the Holder will be able to execute a joinder agreement (or amendment or similar agreement) to the Rights Agreement to cause the Holder to become a party to the Rights Agreement as a “Holder” of “Registrable Securities” thereunder with the registration rights described in Section 3.3 above (subject to the terms and conditions of the Rights Agreement).

[Signature page follows.]
“COMPANY”

FITBIT, INC.

By: /s/ JAMES PARK
Name: JAMES PARK
(Print)
Title: PRESIDENT & CEO

“HOLDER”

SILICON VALLEY BANK

By: /s/ Matthew Wright
Name: Matthew Wright
(Print)
Title: Relationship Manager II
SCHEDULE 1
CAPITALIZATION TABLE

[See attached.]
Capitalization Table – June 8, 2011

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</table>
APPENDIX 1

NOTICE OF EXERCISE

1. Holder elects to purchase shares of the Common/Series Preferred [strike one] Stock of FITBIT, INC. pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

   [or]

1. Holder elects to convert the attached Warrant into Shares/cash [strike one] in the manner specified in the Warrant. This conversion is exercised for of the Shares covered by the Warrant.

   [Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the shares in the name specified below:

   Holders Name
   
   (Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as the date hereof.

   HOLDER:
   
   By: ____________________________
   Name: __________________________
   Title: ___________________________
   (Date): _________________________
APPENDIX 2

ASSIGNMENT

For value received, Silicon Valley Bank hereby sells, assigns and transfers unto

Name: SVB Financial Group
Address: 3003 Tasman Drive (HA-200)
Santa Clara, CA 95054

that certain Warrant to Purchase Stock issued by FITBIT, INC. (the “Company”), on June 2011 (the “Warrant”) together with all rights, title and interest therein.

SILICON VALLEY BANK

By: ________________________________
Name: ________________________________
Title: ________________________________

Date:

By its execution below, and for the benefit of the Company, SVB Financial Group makes each of the representations and warranties set forth in Article 4 of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

SVB FINANCIAL GROUP

By: ________________________________
Name: ________________________________
Title: ________________________________
This First Amendment to Warrant to Purchase Stock (this “Amendment”) is entered into as of April 6, 2012, by and between SVB Financial Group (f/k/a Silicon Valley Bancshares) ("Holder") and Fitbit, Inc., a Delaware corporation ("Company") whose address is 625 Market Street, Suite 1400, San Francisco, CA 94105.

RECITALS

A. Company executed and delivered to Silicon Valley Bank ("Bank") that certain Warrant to Purchase Stock dated June 10, 2011 (the “Warrant”), which Warrant was then assigned by Bank to Holder.

B. Concurrently herewith, Bank and Company are entering into that certain First Amendment to Loan and Security Agreement dated April 6, 2012 (the “First Amendment”), which amends that certain Loan and Security Agreement by and between Bank and Company dated as of June 10, 2011 (as the same may from time to time be further amended, modified, supplemented or restated, the “Loan Agreement”).

C. In connection with the execution of the First Amendment, the parties have agreed to amend the Warrant as more fully set forth below.

AGREEMENT

Now, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Warrant.

2. Amendment to Warrant.

   2.1 Section 2.1 (Stock Dividends, Splits, Etc.) The second sentence of Section 2.1 of the Warrant is amended in its entirety and replaced with the following:

   If, after the date hereof, the Company subdivides the Shares by reclassification or otherwise into a greater number of shares, the number of shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased.

3. Limitation of Amendment.

   3.1 The amendment set forth in Section 2 above is effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of the Warrant, or (b) otherwise prejudice any right or remedy which Holder may now have or may have in the future under or in connection with the Warrant.
4. **Integration.** This Amendment and the Warrant represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Warrant merge into this Amendment and the Warrant.

5. **Counterparts.** This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

   [Signature page follows.]
IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

HOLDER

SVB Financial Group

By: /s/ Matthew Wright
Name: Matthew Wright
Title: RM

THE COMPANY

Fitbit, Inc.

By: /s/ JAMES PARK
Name: JAMES PARK
Title: PRESIDENT & CEO

[First Amendment to Warrant to Purchase Stock]
THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL, IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

WARRANT TO PURCHASE STOCK

Company: FITBIT, INC., a Delaware corporation
Number of Shares: 4,750
Class of Stock: Series C Preferred
Warrant Price: $4.01423 per share
Issue Date: April 6, 2012
Expiration Date: The 7th anniversary after the Issue Date
Credit Facility: This Warrant is issued in connection with the Growth Capital Advances referenced in the First Amendment to Loan and Security Agreement between Company and Silicon Valley Bank dated of even date herewith.

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, SILICON VALLEY BANK (Silicon Valley Bank, together with any registered holder from time to time of this Warrant or any holder of the shares issuable or issued upon exercise of this Warrant, “Holder”) is entitled to purchase the number of fully paid and nonassessable shares of the class of securities (the “Shares”) of the Company at the Warrant Price, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

ARTICLE 1. EXERCISE

1.1 Method of Exercise. Holder may exercise this Warrant by delivering a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, 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.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Article 1.1, Holder may from time to time convert this Warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the Shares or other securities otherwise issuable upon exercise of this Warrant minus the aggregate Warrant Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be determined pursuant to Article 1.3.
1.3 Fair Market Value. If the Company’s common stock is traded in a public market and the Shares are common stock, the fair market value of each Share shall be the closing price of a Share reported for the business day immediately before Holder delivers its Notice of Exercise to the Company (or in the instance where the Warrant is exercised immediately prior to the effectiveness of the Company’s initial public offering, the “price to public” per share price specified in the final prospectus relating to such offering). If the Company’s common stock is traded in a public market and the Shares are preferred stock, the fair market value of a Share shall be the closing price of a share of the Company’s common stock reported for the business day immediately before Holder delivers its Notice of Exercise to the Company (or, in the instance where the Warrant is exercised immediately prior to the effectiveness of the Company’s initial public offering, the initial “price to public” per share price specified in the final prospectus relating to such offering), in both cases, multiplied by the number of shares of the Company’s common stock into which a Share is convertible. If the Company’s common stock is not traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant and, if applicable, 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 or converted and has not expired, a new Warrant representing the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation or surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 “Acquisition”. For the purpose of this Warrant, “Acquisition” means any sale of all or substantially all of the assets of the Company, or any reorganization, consolidation, or merger of the Company where the holders of the Company’s securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction.

1.6.2 Treatment of Warrant at Acquisition.

A) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition that is not an asset sale and in which the sole consideration is cash, either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Acquisition. The Company shall provide Holder with written notice of its request relating to the foregoing (together with such reasonable information as Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than ten (10) days prior to the closing of the proposed Acquisition.
B) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition that is an “arms length” sale of all or substantially all of the Company’s assets (and only its assets) to a third party that is not an Affiliate (as defined below) of the Company (a “True Asset Sale”), either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will continue until the Expiration Date if the Company continues as a going concern following the closing of any such True Asset Sale. The Company shall provide Holder with written notice of its request relating to the foregoing (together with such reasonable information as Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

C) Upon the closing of any Acquisition other than those particularly described in subsections (A) and (B) above, the successor entity shall assume the obligations of this Warrant, and 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 and/or number of Shares shall be adjusted accordingly.

As used herein “Affiliate” shall mean any person or entity that owns or controls directly or indirectly ten (10) percent or more of the stock of Company, any person or entity that controls or is controlled by or is under common control with such persons or entities, and each of such person’s or entity’s officers, directors, joint venturers or partners, as applicable.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the Shares payable in common stock, or other securities, 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 occurred. If, after the date hereof, the Company subdivides the Shares by reclassification or otherwise into a greater number of shares, the number of shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding Shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations 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 an amendment to this Warrant setting forth the number and kind of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, substitution or other event that results in a change of the number and/or class of securities issuable upon exercise or conversion of this Warrant. The amendment to this 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 and to the number of securities or property issuable upon exercise of the new Warrant. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Adjustments for Diluting Issuances. The Warrant Price and the number of Shares issuable upon exercise of this Warrant or, if the Shares are preferred stock, the number of shares of common stock issuable upon conversion of the Shares, shall be subject to adjustment, from time to time in the manner set forth in the Company’s Certificate of Incorporation as if the Shares were issued and outstanding on and as of the date of any such required adjustment. 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 Holder.

In the event that any “pay-to-play” terms or conditions (i.e. terms or conditions that require a holder of the Company’s preferred stock to purchase securities in a future round of equity financing or else lose the benefit of antidilution protection applicable to the shares of preferred stock issuable upon exercise of this Warrant or have such shares of preferred stock automatically convert to common stock or convert to another class and series of the Company’s capital stock) in the Certificate of Incorporation, or other agreement among the Company and its stockholders are triggered in connection with the consummation of any private offering of securities of the Company after the Issue Date at a price per share lower than the Warrant Price then in effect (such offering being referred to herein as a “Down Round”) or otherwise after the date hereof, then in such event, this Warrant shall automatically adjust to become exercisable for the same securities and/or rights that Holder would have received had Holder participated in the Down Round to its full pro rata share with respect to the preferred stock issuable upon exercise of this Warrant (e.g., if the Warrant provides for the purchase of Series B Preferred Stock, and the Company after the Issue Date consummates a Down Round in which those holders of Series B Preferred Stock who participate to their full pro rata share in such Down Round become entitled to exchange Series B Preferred Stock for Series B-2 Preferred Stock and those holders of Series B Preferred Stock who do not participate to their full pro rata share will have their Series B Preferred Stock converted into common stock, then this Warrant would automatically adjust to provide the right to purchase Series B-2 Preferred Stock instead of common stock).

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation 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.
2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion 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 or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Company shall promptly notify Holder in writing, and, at the Company’s expense, promptly compute such adjustment, and furnish Holder with a certificate of 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 in effect upon the date thereof and the series of adjustments leading to such Warrant Price.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to Holder as follows:

(a) The initial Warrant Price referenced on the first page of this Warrant is not greater than (i) the price per share at which the Shares were issued under the Series C Preferred Stock Purchase Agreement dated as of September 27, 2011, which governed the last issuance of Shares in an arms-length transaction in which at least $500,000 of the Shares were sold.

(b) 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 and payment of the exercise price as provided hereunder, 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.

(c) The Company’s capitalization table attached hereto as Schedule 1 is true and correct 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 any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for sale any shares of the Company’s capital stock (or other securities convertible into such capital stock), other than (i) pursuant to the Company’s stock option or other compensatory plans, (ii) in connection with commercial credit arrangements or equipment financings, or (iii) in connection with strategic transactions for purposes other than capital raising; (c) to effect any reclassification or recapitalization of any of its stock; (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; or (e) offer holders of registration rights the opportunity to participate in an underwritten public offering of the Company’s securities for cash, then, in connection with each such event,
the Company shall give Holder: (1) at least 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 common 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; (2) in the case of the matters referred to in (c) and (d) above at least 10 days prior written notice of the date when the same will take place (and specifying the date on which the holders of common stock will be entitled to exchange their common stock for securities or other property deliverable upon the occurrence of such event); and (3) in the case of the matter referred to in (e) above, the same notice as is given to the holders of such registration rights. Company will also provide information requested by Holder reasonably necessary to enable Holder to comply with Holder’s accounting or reporting requirements.

3.3 Registration Under Securities Act of 1933, as amended. Subject to Section 5.11 below, the Company agrees that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall have (i) certain “piggyback” registration rights pursuant to and as set forth in the Company’s Investor Rights Agreement or similar agreement (as amended from time to time, the “Rights Agreement”), and (ii) to the extent allowable under the Rights Agreement, certain S-3 registration rights pursuant to and as set forth in the Rights Agreement. The provisions set forth in the Company’s Rights Agreement or similar agreement 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 Holder.

3.4 No Shareholder Rights. Except as provided in this Warrant, Holder will not have any rights as a shareholder of the Company until the exercise of this Warrant.

ARTICLE 4. REPRESENTATIONS, WARRANTIES OF HOLDER. Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder will be acquired for investment for Holder’s account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that Holder has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.
4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder’s investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an “accredited investor” within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Holder’s investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

ARTICLE 5. MISCELLANEOUS.

5.1 Term. This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 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 THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

5.3 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 (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Silicon Valley Bank (“Bank”) to provide an opinion of counsel if the transfer is to Bank’s parent company, SVB Financial Group (formerly Silicon Valley Bancshares), or any
other affiliate of Bank. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of current information as referenced in Rule 144(c). Holder represents that it has complied with Rule 144(d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder’s notice of proposed sale.

5.4 Transfer Procedure. After receipt by Bank of the executed Warrant, Bank will transfer all of this Warrant to SVB Financial Group by execution of an Assignment substantially in the form of Appendix 2. Subject to the provisions of Article 5.3 and upon providing the Company with written notice, SVB Financial Group and any subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the Shares issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, SVB Financial Group or any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable). The Company may refuse to transfer this Warrant or the Shares to any person who directly competes with the Company, unless, in either case, the stock of the Company is publicly traded.

5.5 Notices. All notices and other communications from the Company to Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such Holder from time to time. Effective upon receipt of the fully executed Warrant and the initial transfer described in Article 5.4 above, all notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

SVB Financial Group
Attn: Treasury Department
3003 Tasman Drive, HC 215
Santa Clara, CA 95054

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

Fitbit, Inc.
Attn: Meena Srinivasan, VP
625 Market Street, Suite 1400
San Francisco, CA 94105

Holder acknowledges notice of the Company’s change in address, to be effective on or about April 30, 2012 to: 150 Spear Street, Suite 200, San Francisco, CA 94105.
5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorneys’ Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys’ fees.

5.8 [Reserved].

5.9 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

5.10 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.

5.11 Joinder. Upon exercise of this Warrant and provided that the Rights Agreement is still in effect, the Company shall use its commercially reasonable efforts to cause the Rights Agreement to be amended so that the Holder will be able to execute a joinder agreement (or amendment or similar agreement) to the Rights Agreement to cause the Holder to become a party to the Rights Agreement as a “Holder” of “Registrable Securities” thereunder with the registration rights described in Section 3.3 above (subject to the terms and conditions of the Rights Agreement).

[Signature page follows.]
“COMPANY”

FITBIT, INC.
By: /s/ JAMES PARK
Name: JAMES PARK  (Print)
Title: PRESIDENT & CEO

“HOLDER”

SILICON VALLEY BANK
By: /s/ Matthew Wright
Name: Matthew Wright  (Print)
Title: RM
SCHEDULE 1
CAPITALIZATION TABLE

[See attached.]
APPENDIX 1

NOTICE OF EXERCISE

1. Holder elects to purchase                  share s of the Common/Series Preferred [strike one] Stock of FITBIT, INC. pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

   [or]

1. Holder elects to convert the attached Warrant into Shares/cash [strike one] in the manner specified in the Warrant. This conversion is exercised for the Shares covered by the Warrant.

   [Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the shares in the name specified below:

   Holders Name
   ____________________________________________
   ____________________________________________
   (Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as the date hereof.

   HOLDER:
   ____________________________________________
   By: _________________________________________
   Name: _______________________________________
   Title: _______________________________________
   (Date): ______________________________________

Holders Name
(Address)
For value received, Silicon Valley Bank hereby sells, assigns and transfers unto

that certain Warrant to Purchase Stock issued by FITBIT, INC. (the “Company”), on __________, 2012 (the “Warrant”) together with all rights, title and interest therein.

SILICON VALLEY BANK

By: ____________________________
Name: __________________________
Title: ___________________________

Date:

By its execution below, and for the benefit of the Company, SVB Financial Group makes each of the representations and warranties set forth in Article 4 of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

SVB FINANCIAL GROUP

By: ____________________________
Name: __________________________
Title: ___________________________
THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN SECTIONS 5.3 AND 5.4 BELOW, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

WARRANT TO PURCHASE STOCK

Company: FitBit, Inc., a Delaware corporation
Number of Shares: As set forth in Paragraph A below
Type/Series of Stock: Series C Preferred Stock, $0.0001 par value per share
Warrant Price: As set forth in Paragraph A below
Issue Date: September 28, 2012
Expiration Date: September 27, 2019 See also Section 5.1(b).
Credit Facility: This Warrant to Purchase Stock ("Warrant") is issued in connection with that certain Subordinated Loan and Security Agreement of even date herewith between Silicon Valley Bank and the Company (as amended and/or modified and in effect from time to time, the "Loan Agreement").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, SILICON VALLEY BANK (together with any successor or permitted assignee or transferee of this Warrant or of any shares issued upon exercise hereof, "Holder") is entitled to purchase up to such number of fully paid and non-assessable shares of the above-stated Type/Series of Stock (the "Class") of the above-named company (the "Company") as determined pursuant to Paragraph A below, at a purchase price per share equal to the Warrant Price (as defined below), subject to the provisions and upon the terms and conditions set forth in this Warrant. Reference is made to Section 5.4 of this Warrant whereby Silicon Valley Bank shall transfer this Warrant to its parent company, SVB Financial Group.

A. Number and Type/Series of Shares; Warrant Price

   (1) Certain Definitions. As used herein, the following definitions have the respective meanings set forth below:

      "Acquisition" has the meaning given in Section 1.6(a) below.

      "Additional Securities" means any warrants or other rights to purchase or acquire shares of Common Stock, or shares of preferred stock of the Company convertible into or exchangeable for shares of Common Stock, issued to the purchasers of Next Equity Financing Securities in the Next Equity Financing.

      "Common Stock" means the Company's common stock, $0.0001 par value per share, and any securities of the Company into or for which the outstanding shares of such common stock may be converted, reclassified, reorganized or exchanged.

      "Initial Warrant Price" means $8.00, as adjusted from time to time upon the occurrence of events described in Section 2 hereof that occur on or after the Issue Date hereof.
“IPO” has the meaning given in Section 2.3 below.

“Next Equity Financing” means the first sale or issuance by the Company on or after the Issue Date of this Warrant set forth above, in a single transaction or series of related transactions, of shares of its convertible preferred stock or other senior equity securities to one or more investors for cash for financing purposes and in which the Company receives aggregate gross cash proceeds of $1,000,000 or more.

“Next Equity Financing Effective Price” means a fraction, (a) the numerator of which shall equal (i) the Next Equity Financing Price, plus (ii) the effective exercise or purchase price per share of Common Stock of the Additional Securities, if any, and (b) the denominator of which shall equal (i) the number of shares of Common Stock into which one share of Next Equity Financing Securities is convertible, plus, only in the event that Additional Securities are issued, (ii) one (1).

“Next Equity Financing Notice” has the meaning given in Section 3.3 below.

“Next Equity Financing Securities” means the type, class and series of convertible preferred stock or other senior equity security (including, without limitation, a security of the unit type comprised of one or more shares of Company capital stock together with Additional Securities) sold or issued by the Company in the Next Equity Financing.

“Next Equity Financing Price” means the lowest price per share for which Next Equity Financing Securities are sold or issued by the Company in the Next Equity Financing.

“Warrant Effective Price” means the Initial Warrant Price divided by the number of shares of Common Stock into which one share of the Class is convertible as determined pursuant to the Certificate of Incorporation.

(2) Warrant Price. The purchase price per Share hereunder (the “Warrant Price”) shall be the Initial Warrant Price, subject to adjustment from time to time in accordance with the provisions of this Warrant; provided, that if the Next Equity Financing Effective Price shall be less than the Warrant Effective Price, each determined as of immediately following the closing of the Next Equity Financing, then the “Warrant Price” shall be the Next Equity Financing Price from and after such closing, subject to adjustment thereafter from time to time in accordance with the provisions of this Warrant.

(3) Number of Shares. This Warrant shall be exercisable for the Initial Shares, plus the Additional Shares, if any (collectively, the “Shares”).

(a) Initial Shares. As used herein, “Initial Shares” means 50,625 shares of the Class, subject to adjustment from time to time in accordance with the provisions of this Warrant.

(b) Additional Shares. Upon such date prior to the expiration hereof (pursuant to 1.6(b) or otherwise), if any, as the aggregate of Mezzanine Term Advances (as defined in the Loan Agreement) made to the Company first exceeds $6,000,000 (regardless of whether any such Mezzanine Term Advance be then still outstanding), this Warrant automatically shall become exercisable for 16,875 additional shares of the Class (the “Additional Shares”), subject to adjustment thereafter from time to time in accordance with the provisions of this Warrant.
SECTION 1. EXERCISE.

1.1 Method of Exercise. Holder may at any time and from time to time exercise this Warrant, in whole or in part, by delivering to the Company the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached hereto as Appendix 1 and, unless Holder is exercising this Warrant pursuant to a cashless exercise set forth in Section 1.2, a check, wire transfer of same-day funds (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.

1.2 Cashless Exercise. On any exercise of this Warrant, in lieu of payment of the aggregate Warrant Price in the manner as specified in Section 1.1 above, but otherwise in accordance with the requirements of Section 1.1, Holder may elect to receive Shares equal to the value of this Warrant, or portion hereof as to which this Warrant is being exercised. Thereupon, the Company shall issue to the Holder such number of fully paid and non-assessable Shares as are computed using the following formula:

\[ X = \frac{Y(A-B)}{A} \]

where:

- \( X \) = the number of Shares to be issued to the Holder;
- \( Y \) = the number of Shares with respect to which this Warrant is being exercised (inclusive of the Shares surrendered to the Company in payment of the aggregate Warrant Price);
- \( A \) = the Fair Market Value (as determined pursuant to Section 1.3 below) of one Share; and
- \( B \) = the Warrant Price.

1.3 Fair Market Value. If the Company’s Common Stock is then traded or quoted on a nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market (a “Trading Market”) and the Class is Common Stock, the fair market value of a Share shall be the closing price or last sale price of a share of Common Stock reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company. If the Company’s Common Stock is then traded in a Trading Market and the Class is a series of the Company’s convertible preferred stock, the fair market value of a Share shall be the closing price or last sale price of a share of the Company’s Common Stock reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company multiplied by the number of shares of the Company’s Common Stock into which a Share is then convertible. If the Company’s Common Stock is not traded in a Trading Market, the Board of Directors of the Company shall determine the fair market value of a Share in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Within a reasonable time after Holder exercises this Warrant in the manner set forth in Section 1.1 or 1.2 above, the Company shall deliver to Holder a certificate representing the Shares issued to Holder upon such exercise and, if this Warrant has not been fully exercised and has not expired, a new warrant of like tenor representing the Shares not so acquired.
1.5 Replacement of Warrant. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form, substance and amount to the Company or, in the case of mutilation, on surrender of this Warrant to the Company for cancellation, the Company shall, within a reasonable time, execute and deliver to Holder, in lieu of this Warrant, a new warrant of like tenor and amount.

1.6 Treatment of Warrant Upon Acquisition of Company.

(a) Acquisition. For the purpose of this Warrant, “Acquisition” means any transaction or series of related transactions involving: (i) the sale, lease, exclusive license, or other disposition of all or substantially all of the assets of the Company (ii) any merger or consolidation of the Company into or with another person or entity (other than a merger or consolidation effected exclusively to change the Company’s domicile), or any other corporate reorganization, in which the stockholders of the Company in their capacity as such immediately prior to such merger, consolidation or reorganization, own less than a majority of the Company’s (or the surviving or successor entity’s) outstanding voting power immediately after such merger, consolidation or reorganization (or, if such Company stockholders beneficially own a majority of the outstanding voting power of the surviving or successor entity as of immediately after such merger, consolidation or reorganization, such surviving or successor entity is not the Company); or (iii) any sale or other transfer by the stockholders of the Company of shares representing at least a majority of the Company’s then-total outstanding combined voting power.

(b) Treatment of Warrant at Acquisition. In the event of an Acquisition in which the consideration to be received by the Company’s stockholders consists solely of cash, solely of Marketable Securities or a combination of cash and Marketable Securities (a “Cash/Public Acquisition”), either (i) Holder shall exercise this Warrant pursuant to Section 1.1 and/or 1.2 and such exercise will be deemed effective immediately prior to and contingent upon the consummation of such Acquisition or (ii) if Holder elects not to exercise the Warrant, this Warrant will expire immediately prior to the consummation of such Acquisition.

(c) The Company shall provide Holder with written notice of its request relating to the Cash/Public Acquisition (together with such reasonable information as Holder may reasonably require regarding the treatment of this Warrant in connection with such contemplated Cash/Public Acquisition giving rise to such notice), which is to be delivered to Holder not less than seven (7) Business Days prior to the closing of the proposed Cash/Public Acquisition. In the event the Company does not provide such notice, then if, immediately prior to the Cash/Public Acquisition, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above would be greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised, and the Company shall promptly notify the Holder of the number of Shares (or such other securities) issued upon such exercise to the Holder and Holder shall be deemed to have restated each of the representations and warranties in Section 4 of the Warrant as the date thereof.
(d) Upon the closing of any Acquisition other than a Cash/Public Acquisition, the acquiring, surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall thereafter be exercisable for the same securities and/or other property as would have been paid for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on and as of the closing of such Acquisition, subject to further adjustment from time to time in accordance with the provisions of this Warrant.

(e) As used in this Warrant, “Marketable Securities” means securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and is then current in its filing of all required reports and other information under the Act and the Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise this Warrant on or prior to the closing thereof is then traded in Trading Market, and (iii) following the closing of such Acquisition, Holder would not be restricted from publicly re-selling all of the issuer’s shares and/or other securities that would be received by Holder in such Acquisition were Holder to exercise or convert this Warrant in full on or prior to the closing of such Acquisition, except to the extent that any such restriction (x) arises solely under federal or state securities laws, rules or regulations, and (y) does not extend beyond six (6) months from the closing of such Acquisition.

SECTION 2. ADJUSTMENTS TO THE SHARES AND WARRANT PRICE.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend or distribution on the outstanding shares of the Class payable in Common Stock or other securities or property (other than cash), then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without additional cost to Holder, the total number and kind of securities and property which Holder would have received had Holder owned the Shares of record as of the date the dividend or distribution occurred. If the Company subdivides the outstanding shares of the Class by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of the Class are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any event whereby all of the outstanding shares of the Class are reclassified, exchanged, combined, substituted, or replaced for, into, with or by Company securities of a different class and/or series, then from and after the consummation of such event, this Warrant will be exercisable for the number, class and series of Company securities that Holder would have received had the Shares been outstanding on and as of the consummation of such event, and subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, combinations substitutions, replacements or other similar events.

2.3 Conversion of Preferred Stock. If the Class is a class and series of the Company’s convertible preferred stock, in the event that all outstanding shares of the Class are converted, automatically or by action of the holders thereof, into Common Stock pursuant to the provisions of the Company’s Certificate of Incorporation, including, without limitation, in connection with the Company’s initial, underwritten public offering and sale of its Common Stock pursuant to an effective
registration statement under the Act (the “IPO”), then from and after the date on which all outstanding shares of the Class have been so converted, this Warrant shall be exercisable for such number of shares of Common Stock into which the Shares would have been converted had the Shares been outstanding on the date of such conversion, and the Warrant Price shall equal the Warrant Price in effect as of immediately prior to such conversion divided by the number of shares of Common Stock into which one Share would have been converted, all subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant.

2.4 Adjustments for Diluting Issuances. Without duplication of any adjustment otherwise provided for in this Section 2, the number of shares of Common Stock issuable upon conversion of the Shares shall be subject to anti-dilution adjustment from time to time in the manner set forth in the Company’s Certificate of Incorporation as if the Shares were issued and outstanding on and as of the date of any such required adjustment.

2.5 No Fractional Share. No fractional Share 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 the Warrant, the Company shall eliminate such fractional Share interest by paying Holder in cash the amount computed by multiplying the fractional interest by (i) the fair market value (as determined in accordance with Section 1.3 above) of a full Share, less (ii) the then-effective Warrant Price.

2.6 Notice/Certificate as to Adjustments. Upon each adjustment of the Warrant Price, Class and/or number of Shares, the Company, at the Company’s expense, shall notify Holder in writing within a reasonable time setting forth the adjustments to the Warrant Price, Class and/or number of Shares and facts upon which such adjustment is based. The Company shall, upon written request from Holder, furnish Holder with a certificate of its Chief Financial Officer, including computations of such adjustment and the Warrant Price, Class and number of Shares in effect upon the date of such adjustment.

2.7 Pay to Play Adjustments. Notwithstanding the definition of Class herein, if Pay to Play Provisions are at any time during the term of this Warrant applied to the outstanding shares of the Class, then from and after such application, “Class” shall mean that class and series of the Company’s securities that a holder of outstanding shares of the Class as of immediately prior to such application would have received or retained had such holder participated in the manner necessary to receive or retain the class and series of the Company’s securities having the relative rights, powers, privileges and preferences more favorable to the holder. As used herein, “Pay to Play Provisions” means provisions set forth in the Company’s Certificate of Incorporation or elsewhere that require holders of the outstanding shares of the Class to participate in a subsequent round of equity financing of the Company or lose all or a portion of the benefit of anti-dilution protection or any other right, power, privilege or preference applicable to such shares or have such shares automatically convert to Common Stock or another class or series of Company capital stock.

SECTION 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, the Holder as follows:

(a) As of the Issue Date, the Common Stock conversion ratio of the Series C Stock is 4:1.
(b) All Shares which may be issued upon the exercise of this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws. The Company covenants that it shall at all times cause to be reserved and kept available out of its authorized and unissued capital stock such number of shares of the Class, Common Stock and other securities as will be sufficient to permit the exercise in full of this Warrant and the conversion of the Shares into Common Stock or such other securities.

(c) The Company’s capitalization table attached hereto as Schedule lis true and complete, in all material respects, as of the Issue Date.

3.2 Notice of Certain Events. If the Company proposes at any time to:

(a) declare any dividend or distribution upon the outstanding shares of the Class or Common Stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend;

(b) offer for subscription or sale pro rata to the holders of the outstanding shares of the Class any additional shares of any class or series of the Company’s stock (other than pursuant to contractual pre-emptive rights);

(c) effect any reclassification, exchange, combination, substitution, reorganization or recapitalization of the outstanding shares of the Class;

(d) effect an Acquisition or to liquidate, dissolve or wind up; or

(e) effect an IPO;

then, in connection with each such event, the Company shall give Holder:

(1) in the case of the matters referred to in (a) and (b) above, at least seven (7) Business Days prior written notice of the earlier to occur of the effective date thereof or 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 outstanding shares of the Class will be entitled thereto) or for determining rights to vote, if any;

(2) in the case of the matters referred to in (c) and (d) above at least seven (7) Business Days prior written notice of the date when the same will take place (and specifying the date on which the holders of outstanding shares of the Class will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event); and

(3) with respect to the IPO, at least seven (7) Business Days prior written notice of the date on which the Company proposes to file its registration statement in connection therewith.

Reference is made to Section 1.6(c) whereby this Warrant will be deemed to be exercised pursuant to Section 1.2 hereof if the Company does not give written notice to Holder of a Cash/Public Acquisition.
as required by the terms hereof. Company will also provide information requested by Holder that is reasonably necessary to enable Holder to comply with Holder’s accounting or reporting requirements. Holder agrees to treat and hold all information provided by the Company hereunder in confidence in accordance with the provisions of Section 12.10 of the Loan Agreement.

3.3 Next Equity Financing Notice. The Company shall provide written notice (the “Next Equity Financing Notice”) to Holder of the Next Equity Financing not later than seven (7) days prior to the closing thereof, which notice shall specify the material terms and conditions (including, without limitation, price) thereof and the principal investor purchasers therein.

SECTION 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER.

The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder are being acquired for investment for Holder’s account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder is aware of the Company’s business affairs and financial condition and has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder’s investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an “accredited investor” within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder’s investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

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4.6 **No Voting Rights.** Holder, as a Holder of this Warrant, will not have any voting rights until the exercise of this Warrant.

SECTION 5. MISCELLANEOUS.

5.1 **Term; Automatic Cashless Exercise Upon Expiration.**

(a) **Term.** Subject to the provisions of Section 1.6 above, this Warrant is exercisable in whole or in part at any time and from time to time on or before 6:00 PM, Pacific time, on the Expiration Date and shall be void thereafter.

(b) **Automatic Cashless Exercise upon Expiration.** In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised, and the Company shall, within a reasonable time, deliver a certificate representing the Shares (or such other securities) issued upon such exercise to Holder.

5.2 **Legends.** Each certificate evidencing Shares (and each certificate evidencing securities issued upon conversion of any Shares, if any) shall be imprinted with a legend in substantially the following form:

THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN THAT CERTAIN WARRANT TO PURCHASE STOCK ISSUED BY THE ISSUER TO SILICON VALLEY BANK DATED SEPTEMBER 28, 2012, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

5.3 **Compliance with Securities Laws on Transfer.** This Warrant and the Shares issued 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 except in compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to SVB Financial Group (Silicon Valley Bank’s parent company) or any other affiliate of Holder, provided that any such transferee is an “accredited investor” as defined in Regulation D promulgated under the Act. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act.
5.4 Transfer Procedure. After receipt by Silicon Valley Bank of the executed Warrant, Silicon Valley Bank will transfer all of this Warrant to its parent company, SVB Financial Group. By its acceptance of this Warrant, SVB Financial Group hereby makes to the Company each of the representations and warranties set forth in Section 4 hereof and agrees to be bound by all of the terms and conditions of this Warrant as if the original Holder hereof. Subject to the provisions of Section 5.3 and upon providing the Company with written notice, SVB Financial Group and any subsequent Holder may transfer all or part of this Warrant or the Shares issued upon exercise of this Warrant (or the securities issued upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, SVB Financial Group or any subsequent Holder will give the Company notice of the portion of the Warrant and/or Shares (and/or securities issued upon conversion of the Shares, if any) being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable); and provided further, that any subsequent transferee other than SVB Financial Group shall agree in writing with the Company to be bound by all of the terms and conditions of this Warrant. Notwithstanding any contrary provision herein, at all times prior to the IPO, Holder may not, without the Company’s prior written consent, transfer this Warrant or any portion hereof, or any Shares issued upon any exercise hereof, or any shares or other securities issued upon any conversion of any Shares issued upon any exercise hereof, to any person or entity who directly competes with the Company, except in connection with an Acquisition of the Company by such a direct competitor.

5.5 Notices. All notices and other communications hereunder from the Company to the Holder, or vice versa, shall be deemed delivered and effective (i) when given personally, (ii) on the third (3rd) Business Day after being mailed by first-class registered or certified mail, postage prepaid, (iii) upon actual receipt if given by facsimile or electronic mail and such receipt is confirmed in writing by the recipient, or (iv) on the first Business Day following delivery to a reliable overnight courier service, courier fee prepaid, in any case at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such Holder from time to time in accordance with the provisions of this Section 5.5. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

SVB Financial Group  
Attn: Treasury Department  
3003 Tasman Drive, HC 215  
Santa Clara, CA 95054

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

FitBit, Inc.  
Attn: Meena Srinivasan, VP  
150 Spear Street, Suite 200  
San Francisco, CA 94105
5.6 **Waiver.** This Warrant and any term hereof may be changed, waived, discharged or terminated (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 **Attorneys’ Fees.** In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys’ fees.

5.8 **Counterparts; Facsimile/Electronic Signatures.** This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement. Any signature page delivered electronically or by facsimile shall be binding to the same extent as an original signature page with regards to any agreement subject to the terms hereof or any amendment thereto.

5.9 **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.

5.10 **Headings.** The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

5.11 **Business Days.** “**Business Day**” is any day that is not a Saturday, Sunday or a day on which Silicon Valley Bank is closed.
IN WITNESS WHEREOF, the parties have caused this Warrant to Purchase Stock to be executed by their duly authorized representatives effective as of the Issue Date written above.

“COMPANY”
FITBIT, INC.

By: /s/ James Park
Name: JAMES PARK
(Print)
Title: PRESIDENT & CEO

“HOLDER”
SILICON VALLEY BANK

By: /s/ Matthew Wright
Name: Matthew Wright
(Print)
Title: RM
NOTICE OF EXERCISE

1. The undersigned Holder hereby exercises its right to purchase ________ shares of the Common/Series ______ Preferred [circle one] Stock of ________ (the “Company”) in accordance with the attached Warrant To Purchase Stock, and tenders payment of the aggregate Warrant Price for such shares as follows:

   [ ] check in the amount of $ ______ payable to order of the Company enclosed herewith
   [ ] Wire transfer of immediately available funds to the Company’s account
   [ ] Cashless Exercise pursuant to Section 1.2 of the Warrant
   [ ] Other [Describe] __________________________________________

2. Please issue a certificate or certificates representing the Shares in the name specified below:

   __________________________________________
   Holder’s Name
   __________________________________________
   (Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Section 4 of the Warrant to Purchase Stock as of the date hereof.

   ________________________________
   HOLDER:
   ________________________________
   By: ________________________________
   Name: ________________________________
   Title: ________________________________
   ________________________________
   (Date): ________________________________

Appendix 1
SCHEDULE 1

Company Capitalization Table

See attached

Schedule 1
<table>
<thead>
<tr>
<th>Class</th>
<th>Authorized</th>
<th>Outstanding</th>
<th>Post Common Stock Dividend Outstanding</th>
<th>As if converted** Outstanding</th>
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</thead>
<tbody>
<tr>
<td><strong>Common:</strong></td>
<td>$0.0010 per share</td>
<td>68,000,000</td>
<td>3,060,000</td>
<td>12,240,000</td>
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<tr>
<td>COMMON STOCK</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Series A:</strong></td>
<td>$0.50 per share</td>
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<td>850,000</td>
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<td>850,000</td>
<td>3,400,000</td>
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<td><strong>Series A-1:</strong></td>
<td>$1.09974 per share</td>
<td>1,864,076</td>
<td>1,864,076</td>
<td>1,864,076</td>
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<td>1,864,076</td>
<td>1,864,076</td>
<td>7,456,304</td>
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<td><strong>Series B:</strong></td>
<td>$2.58961 per share</td>
<td>3,530,000</td>
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<td>3,475,426</td>
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<tr>
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<td>3,475,426</td>
<td>13,901,704</td>
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<td><strong>Series C:</strong></td>
<td>$4.01423 per share</td>
<td>5,000,000</td>
<td>3,006,667</td>
<td>3,006,667</td>
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<tr>
<td>SERIES C PREFERRED STOCK</td>
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<td>3,006,667</td>
<td>12,026,668</td>
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<tr>
<td><strong>Series B Warrants:</strong></td>
<td>SERIES B WARRANTS</td>
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<td>208,520</td>
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<td><strong>Series C Warrants:</strong></td>
<td>SERIES C WARRANTS</td>
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<td>19,000</td>
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<td><strong>Stock Options:</strong></td>
<td>Option Pool</td>
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<td>7,633,920</td>
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<td>Options Grants</td>
<td>Options available for Grant</td>
<td>1,908,480</td>
<td>7,633,920</td>
<td>7,633,920</td>
</tr>
<tr>
<td>TOTAL FULLY DILUTED SHARES OUTSTANDING</td>
<td>79,244,076</td>
<td>14,221,529</td>
<td>29,126,969</td>
<td>56,886,116</td>
</tr>
</tbody>
</table>

* A 3 for 1 common stock dividend was issued at the close of the Series C financing in Sept 2011
** Assuming conversion of Preferred to common
THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN SECTIONS 5.3 AND 5.4 BELOW, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

WARRANT TO PURCHASE STOCK

Company: FitBit, Inc., a Delaware corporation
Number of Shares: As set forth in Paragraph A below
Type/Series of Stock: Series C Preferred Stock, $0.0001 par value per share
Warrant Price: As set forth in Paragraph A below
Issue Date: September 28, 2012
Expiration Date: September 27, 2019
Credit Facility: This Warrant to Purchase Stock (the “Warrant”) is issued in connection with that certain Subordinated Loan and Security Agreement of even date herewith between Silicon Valley Bank and the Company (as amended and/or modified and in effect from time to time, the “Loan Agreement”) and the participation therein of WestRiver Mezzanine Loans, LLC pursuant to an arrangement among Silicon Valley Bank, WestRiver Management, LLC and WestRiver Mezzanine Loans, LLC.

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, WESTRIVER MEZZANINE LOANS, LLC (together with any successor or permitted assignee or transferee of this Warrant or of any shares issued upon exercise hereof, “Holder”) is entitled to purchase up to such number of fully paid and non-assessable shares of the above-stated Type/Series of Stock (the “Class”) of the above-named company (the “Company”) as determined pursuant to Paragraph A below, at a purchase price per share equal to the Warrant Price (as defined below), subject to the provisions and upon the terms and conditions set forth in this Warrant.

A. Number and Type/Series of Shares; Warrant Price.
   (1) Certain Definitions. As used herein, the following definitions have the respective meanings set forth below:
      “Acquisition” has the meaning given in Section 1.6(a) below.
      “Additional Securities” means any warrants or other rights to purchase or acquire shares of Common Stock, or shares of preferred stock of the Company convertible into or exchangeable for shares of Common Stock, issued to the purchasers of Next Equity Financing Securities in the Next Equity Financing.
      “Common Stock” means the Company’s common stock, $0.0001 par value per share, and any securities of the Company into or for which the outstanding shares of such common stock may be converted, reclassified, reorganized or exchanged.

1
“Initial Warrant Price” means $8.00, as adjusted from time to time upon the occurrence of events described in Section 2 hereof that occur on or after the Issue Date hereof.

“IPO” has the meaning given in Section 2.3 below.

“Next Equity Financing” means the first sale or issuance by the Company on or after the Issue Date of this Warrant set forth above, in a single transaction or series of related transactions, of shares of its convertible preferred stock or other senior equity securities to one or more investors for cash for financing purposes and in which the Company receives aggregate gross cash proceeds of $1,000,000 or more.

“Next Equity Financing Effective Price” means a fraction, (a) the numerator of which shall equal (i) the Next Equity Financing Price, plus (ii) the effective exercise or purchase price per share of Common Stock of the Additional Securities, if any, and (b) the denominator of which shall equal (i) the number of shares of Common Stock into which one share of Next Equity Financing Securities is convertible, plus, only in the event that Additional Securities are issued, (ii) one (1).

“Next Equity Financing Notice” has the meaning given in Section 3.3 below.

“Next Equity Financing Securities” means the type, class and series of convertible preferred stock or other senior equity security (including, without limitation, a security of the unit type comprised of one or more shares of Company capital stock together with Additional Securities) sold or issued by the Company in the Next Equity Financing.

“Next Equity Financing Price” means the lowest price per share for which Next Equity Financing Securities are sold or issued by the Company in the Next Equity Financing.

“Warrant Effective Price” means the Initial Warrant Price divided by the number of shares of Common Stock into which one share of the Class is convertible as determined pursuant to the Certificate of Incorporation.

(2) Warrant Price. The purchase price per Share hereunder (the “Warrant Price”) shall be the Initial Warrant Price, subject to adjustment from time to time in accordance with the provisions of this Warrant, provided, that if the Next Equity Financing Effective Price shall be less than the Warrant Effective Price, each determined as of immediately following the closing of the Next Equity Financing, then the “Warrant Price” shall be the Next Equity Financing Price from and after such closing, subject to adjustment thereafter from time to time in accordance with the provisions of this Warrant.

(3) Number of Shares. This Warrant shall be exercisable for the Initial Shares, plus the Additional Shares, if any (collectively, the “Shares”).

(a) Initial Shares. As used herein, “Initial Shares” means 50,625 shares of the Class, subject to adjustment from time to time in accordance with the provisions of this Warrant.

(b) Additional Shares. Upon such date prior to the expiration hereof (pursuant to 1.6(b) or otherwise), if any, as the aggregate of Mezzanine Term Advances (as defined in the Loan Agreement) made to the Company first exceeds $6,000,000 (regardless of whether any such Mezzanine Term Advance be then still outstanding), this Warrant automatically shall become exercisable for 16,875 additional shares of the Class (the “Additional Shares”), subject to adjustment thereafter from time to time in accordance with the provisions of this Warrant.
SECTION 1. EXERCISE.

1.1 Method of Exercise. Holder may at any time and from time to time exercise this Warrant, in whole or in part, by delivering to the Company the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached hereto as Appendix 1 and, unless Holder is exercising this Warrant pursuant to a cashless exercise set forth in Section 1.2, a check, wire transfer of same-day funds (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.

1.2 Cashless Exercise. On any exercise of this Warrant, in lieu of payment of the aggregate Warrant Price in the manner as specified in Section 1.1 above, but otherwise in accordance with the requirements of Section 1.1, Holder may elect to receive Shares equal to the value of this Warrant, or portion hereof as to which this Warrant is being exercised. Thereupon, the Company shall issue to the Holder such number of fully paid and non-assessable Shares as are computed using the following formula:

\[ X = \frac{Y(A-B)}{A} \]

where:

- \( X \) = the number of Shares to be issued to the Holder;
- \( Y \) = the number of Shares with respect to which this Warrant is being exercised (inclusive of the Shares surrendered to the Company in payment of the aggregate Warrant Price);
- \( A \) = the Fair Market Value (as determined pursuant to Section 1.3 below) of one Share; and
- \( B \) = the Warrant Price.

1.3 Fair Market Value. If the Company’s Common Stock is then traded or quoted on a nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market (a “Trading Market”) and the Class is Common Stock, the fair market value of a Share shall be the closing price or last sale price of a share of Common Stock reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company. If the Company’s Common Stock is then traded in a Trading Market and the Class is a series of the Company’s convertible preferred stock, the fair market value of a Share shall be the closing price or last sale price of a share of the Company’s Common Stock reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company multiplied by the number of shares of the Company’s Common Stock into which a Share is then convertible. If the Company’s Common Stock is not traded in a Trading Market, the Board of Directors of the Company shall determine the fair market value of a Share in its reasonable good faith judgment.

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1.4 Delivery of Certificate and New Warrant. Within a reasonable time after Holder exercises this Warrant in the manner set forth in Section 1.1 or 1.2 above, the Company shall deliver to Holder a certificate representing the Shares issued to Holder upon such exercise and, if this Warrant has not been fully exercised and has not expired, a new warrant of like tenor representing the Shares not so acquired.

1.5 Replacement of Warrant. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form, substance and amount to the Company or, in the case of mutilation, on surrender of this Warrant to the Company for cancellation, the Company shall, within a reasonable time, execute and deliver to Holder, in lieu of this Warrant, a new warrant of like tenor and amount.

1.6 Treatment of Warrant Upon Acquisition of Company.

(a) Acquisition. For the purpose of this Warrant, “Acquisition” means any transaction or series of related transactions involving: (i) the sale, lease, exclusive license, or other disposition of all or substantially all of the assets of the Company (ii) any merger or consolidation of the Company into or with another person or entity (other than a merger or consolidation effected exclusively to change the Company’s domicile), or any other corporate reorganization, in which the stockholders of the Company in their capacity as such immediately prior to such merger, consolidation or reorganization, own less than a majority of the Company’s (or the surviving or successor entity’s) outstanding voting power immediately after such merger, consolidation or reorganization (or, if such Company stockholders beneficially own a majority of the outstanding voting power of the surviving or successor entity as of immediately after such merger, consolidation or reorganization, such surviving or successor entity is not the Company); or (iii) any sale or other transfer by the stockholders of the Company of shares representing at least a majority of the Company’s then-total outstanding combined voting power.

(b) Treatment of Warrant at Acquisition. In the event of an Acquisition in which the consideration to be received by the Company’s stockholders consists solely of cash, solely of Marketable Securities or a combination of cash and Marketable Securities (a “Cash/Public Acquisition”), either (i) Holder shall exercise this Warrant pursuant to Section 1.1 and/or 1.2 and such exercise will be deemed effective immediately prior to and contingent upon the consummation of such Acquisition or (ii) if Holder elects not to exercise the Warrant, this Warrant will expire immediately prior to the consummation of such Acquisition.

(c) The Company shall provide Holder with written notice of its request relating to the Cash/Public Acquisition (together with such reasonable information as Holder may reasonably require regarding the treatment of this Warrant in connection with such contemplated Cash/Public Acquisition giving rise to such notice), which is to be delivered to Holder not less than seven (7) Business Days prior to the closing of the proposed Cash/Public Acquisition. In the event the Company does not provide such notice, then if, immediately prior to the Cash/Public Acquisition, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above would be greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised, and the Company shall promptly notify the Holder of the number of Shares (or such other securities) issued upon such exercise to the Holder and Holder shall be deemed to have restated each of the representations and warranties in Section 4 of the Warrant as the date thereof.
(d) Upon the closing of any Acquisition other than a Cash/Public Acquisition, the acquiring, surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall thereafter be exercisable for the same securities and/or other property as would have been paid for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on and as of the closing of such Acquisition, subject to further adjustment from time to time in accordance with the provisions of this Warrant.

(e) As used in this Warrant, “Marketable Securities” means securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and is then current in its filing of all required reports and other information under the Act and the Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise this Warrant on or prior to the closing thereof is then traded in Trading Market, and (iii) following the closing of such Acquisition, Holder would not be restricted from publicly re-selling all of the issuer’s shares and/or other securities that would be received by Holder in such Acquisition were Holder to exercise or convert this Warrant in full on or prior to the closing of such Acquisition, except to the extent that any such restriction (x) arises solely under federal or state securities laws, rules or regulations, and (y) does not extend beyond six (6) months from the closing of such Acquisition.

SECTION 2. ADJUSTMENTS TO THE SHARES AND WARRANT PRICE.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend or distribution on the outstanding shares of the Class payable in Common Stock or other securities or property (other than cash), then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without additional cost to Holder, the total number and kind of securities and property which Holder would have received had Holder owned the Shares of record as of the date the dividend or distribution occurred. If the Company subdivides the outstanding shares of the Class by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of the Class are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any event whereby all of the outstanding shares of the Class are reclassified, exchanged, combined, substituted, or replaced for, into, with or by Company securities of a different class and/or series, then from and after the consummation of such event, this Warrant will be exercisable for the number, class and series of Company securities that Holder would have received had the Shares been outstanding on and as of the consummation of such event, and subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, combinations substitutions, replacements or other similar events.
2.3 Conversion of Preferred Stock. If the Class is a class and series of the Company’s convertible preferred stock, in the event that all outstanding shares of the Class are converted, automatically or by action of the holders thereof, into Common Stock pursuant to the provisions of the Company’s Certificate of Incorporation, including, without limitation, in connection with the Company’s initial, underwritten public offering and sale of its Common Stock pursuant to an effective registration statement under the Act (the “IPO”), then from and after the date on which all outstanding shares of the Class have been so converted, this Warrant shall be exercisable for such number of shares of Common Stock into which the Shares would have been converted had the Shares been outstanding on the date of such conversion, and the Warrant Price shall equal the Warrant Price in effect as of immediately prior to such conversion divided by the number of shares of Common Stock into which one Share would have been converted, all subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant.

2.4 Adjustments for Diluting Issuances. Without duplication of any adjustment otherwise provided for in this Section 2, the number of shares of Common Stock issuable upon conversion of the Shares shall be subject to anti-dilution adjustment from time to time in the manner set forth in the Company’s Certificate of Incorporation as if the Shares were issued and outstanding on and as of the date of any such required adjustment.

2.5 No Fractional Share. No fractional Share 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 the Warrant, the Company shall eliminate such fractional Share interest by paying Holder in cash the amount computed by multiplying the fractional interest by (i) the fair market value (as determined in accordance with Section 1.3 above) of a full Share, less (ii) the then-effective Warrant Price.

2.6 Notice/Certificate as to Adjustments. Upon each adjustment of the Warrant Price, Class and/or number of Shares, the Company, at the Company’s expense, shall notify Holder in writing within a reasonable time setting forth the adjustments to the Warrant Price, Class and/or number of Shares and facts upon which such adjustment is based. The Company shall, upon written request from Holder, furnish Holder with a certificate of its Chief Financial Officer, including computations of such adjustment and the Warrant Price, Class and number of Shares in effect upon the date of such adjustment.

2.7 Pay to Play Adjustments. Notwithstanding the definition of Class herein, if Pay to Play Provisions are at any time during the term of this Warrant applied to the outstanding shares of the Class, then from and after such application, “Class” shall mean that class and series of the Company’s securities that a holder of outstanding shares of the Class as of immediately prior to such application would have received or retained had such holder participated in the manner necessary to receive or retain the class and series of the Company’s securities having the relative rights, powers, privileges and preferences more favorable to the holder. As used herein, “Pay to Play Provisions” means provisions set forth in the Company’s Certificate of Incorporation or elsewhere that require holders of the outstanding shares of the Class to participate in a subsequent round of equity financing of the Company or lose all or a portion of the benefit of anti-dilution protection or any other right, power, privilege or preference applicable to such shares or have such shares automatically convert to Common Stock or another class or series of Company capital stock.

SECTION 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, the Holder as follows:

(a) As of the Issue Date, the Common Stock conversion ratio of the Series C Stock is 4:1.
(b) All Shares which may be issued upon the exercise of this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws. The Company covenants that it shall at all times cause to be reserved and kept available out of its authorized and unissued capital stock such number of shares of the Class, Common Stock and other securities as will be sufficient to permit the exercise in full of this Warrant and the conversion of the Shares into Common Stock or such other securities.

(c) The Company’s capitalization table attached hereto as Schedule 1 is true and complete, in all material respects, as of the Issue Date.

3.2 Notice of Certain Events. If the Company proposes at any time to:

(a) declare any dividend or distribution upon the outstanding shares of the Class or Common Stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend;

(b) offer for subscription or sale pro rata to the holders of the outstanding shares of the Class any additional shares of any class or series of the Company’s stock (other than pursuant to contractual pre-emptive rights);

(c) effect any reclassification, exchange, combination, substitution, reorganization or recapitalization of the outstanding shares of the Class;

(d) effect an Acquisition or to liquidate, dissolve or wind up; or

(e) effect an IPO;

then, in connection with each such event, the Company shall give Holder:

(1) in the case of the matters referred to in (a) and (b) above, at least seven (7) Business Days prior written notice of the earlier to occur of the effective date thereof or 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 outstanding shares of the Class will be entitled thereto) or for determining rights to vote, if any;

(2) in the case of the matters referred to in (c) and (d) above at least seven (7) Business Days prior written notice of the date when the same will take place (and specifying the date on which the holders of outstanding shares of the Class will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event); and

(3) with respect to the IPO, at least seven (7) Business Days prior written notice of the date on which the Company proposes to file its registration statement in connection therewith.
Reference is made to Section 1.6(c) whereby this Warrant will be deemed to be exercised pursuant to Section 1.2 hereof if the Company does not give written notice to Holder of a Cash/Public Acquisition as required by the terms hereof. Company will also provide information requested by Holder that is reasonably necessary to enable Holder to comply with Holder’s accounting or reporting requirements. Holder agrees to treat and hold all information provided by the Company hereunder in confidence in accordance with the provisions of Section 12.10 of the Loan Agreement.

3.3 Next Equity Financing Notice. The Company shall provide written notice (the “Next Equity Financing Notice”) to Holder of the Next Equity Financing not later than seven (7) days prior to the closing thereof, which notice shall specify the material terms and conditions (including, without limitation, price) thereof and the principal investor purchasers therein.

SECTION 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER.

The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder are being acquired for investment for Holder’s account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder is aware of the Company’s business affairs and financial condition and has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder’s investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an “accredited investor” within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder’s investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

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4.6 No Voting Rights. Holder, as a Holder of this Warrant, will not have any voting rights until the exercise of this Warrant.

SECTION 5. MISCELLANEOUS.

5.1 Term; Automatic Cashless Exercise Upon Expiration.

(a) Term. Subject to the provisions of Section 1.6 above, this Warrant is exercisable in whole or in part at any time and from time to time on or before 6:00 PM, Pacific time, on the Expiration Date and shall be void thereafter.

(b) Automatic Cashless Exercise upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised, and the Company shall, within a reasonable time, deliver a certificate representing the Shares (or such other securities) issued upon such exercise to Holder.

5.2 Legends. Each certificate evidencing Shares (and each certificate evidencing securities issued upon conversion of any Shares, if any) shall be imprinted with a legend in substantially the following form:

THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN THAT CERTAIN WARRANT TO PURCHASE STOCK ISSUED BY THE ISSUER TO WESTRIVER MEZZANINE LOANS, LLC DATED SEPTEMBER 28, 2012, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issued 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 except in compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder, provided that such affiliate is an “accredited investor” as defined in Regulation D promulgated under the Act. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act.
5.4 Transfer Procedure. Subject to the provisions of Section 5.3 and upon providing the Company with written notice, Holder may transfer all or part of this Warrant or the Shares issued upon exercise of this Warrant (or the securities issued upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, Holder will give the Company notice of the portion of the Warrant and/or Shares (and/or securities issued upon conversion of the Shares, if any) being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable); and provided further, that any subsequent transferee shall agree in writing with the Company to be bound by all of the terms and conditions of this Warrant. Notwithstanding any contrary provision herein, at all times prior to the IPO, Holder may not, without the Company’s prior written consent, transfer this Warrant or any portion hereof, or any Shares issued upon any exercise hereof, or any shares or other securities issued upon any conversion of any Shares issued upon any exercise hereof, to any person or entity who directly competes with the Company, except in connection with an Acquisition of the Company by such a direct competitor.

5.5 Notices. All notices and other communications hereunder from the Company to the Holder, or vice versa, shall be deemed delivered and effective (i) when given personally, (ii) on the third (3rd) Business Day after being mailed by first-class registered or certified mail, postage prepaid, (iii) upon actual receipt if given by facsimile or electronic mail and such receipt is confirmed in writing by the recipient, or (iv) on the first Business Day following delivery to a reliable overnight courier service, courier fee prepaid, in any case at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such Holder from time to time in accordance with the provisions of this Section 5.5. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

WestRiver Mezzanine Loans, LLC
c/o WestRiver Management, LLC
3720 Carillon Point
Kirkland, Washington 98033-7455
Attention: Erik J. Anderson

With a copy (which shall not constitute notice) to:
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Attention: David C. Clarke

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

FitBit, Inc.
Attn: Meena Srinivasan, VP
150 Spear Street, Suite 200
San Francisco, CA 94105
5.6 **Waiver.** This Warrant and any term hereof may be changed, waived, discharged or terminated (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 **Attorneys’ Fees.** In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys’ fees.

5.8 **Counterparts; Facsimile/Electronic Signatures.** This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement. Any signature page delivered electronically or by facsimile shall be binding to the same extent as an original signature page with regards to any agreement subject to the terms hereof or any amendment thereto.

5.9 **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.

5.10 **Headings.** The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

5.11 **Business Days.** “**Business Day**” is any day that is not a Saturday, Sunday or a day on which WestRiver Mezzanine Loans, LLC is closed.

[Remainder of page left blank intentionally]

[Signature page follows]

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IN WITNESS WHEREOF, the parties have caused this Warrant to Purchase Stock to be executed by their duly authorized representatives effective as of the Issue Date written above.

“COMPANY”

FITBIT, INC.

By: /s/ James Park
Name: James Park (Print)
Title: President & CEO

“HOLDER”

WESTRIVER MEZZANINE LOANS, LLC

By: WestRiver Management, LLC, its Managing Member

By: /s/ Erik J. Anderson
Erik J. Anderson, Manager
NOTICE OF EXERCISE

1. The undersigned Holder hereby exercises its right to purchase shares of the Common/Series Preferred [circle one] Stock of (the "Company") in accordance with the attached Warrant To Purchase Stock, and tenders payment of the aggregate Warrant Price for such shares as follows:
   [ ] check in the amount of $ payable to order of the Company enclosed herewith
   [ ] Wire transfer of immediately available funds to the Company’s account
   [ ] Cashless Exercise pursuant to Section 1.2 of the Warrant
   [ ] Other [Describe] 

2. Please issue a certificate or certificates representing the Shares in the name specified below:

   ____________________________
   Holder’s Name

   ____________________________
   (Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Section 4 of the Warrant to Purchase Stock as of the date hereof.

   ____________________________
   HOLDER:

   ____________________________
   By:

   ____________________________
   Name:

   ____________________________
   Title:

   ____________________________
   (Date):

Appendix 1
<table>
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<tr>
<th>Class</th>
<th>Authorized</th>
<th>Outstanding</th>
<th>Post Common Stock Dividend Outstanding</th>
<th>As if converted**</th>
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<tr>
<td>Common: $0.0010 per share</td>
<td>68,000,000</td>
<td>3,060,000</td>
<td>12,240,000</td>
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<td>COMMON STOCK</td>
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<td>Series A: $0.50 per share</td>
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<td>Series B: $2.58961 per share</td>
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<td>Series C: $4.01423 per share</td>
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<td>SERIES C PREFERRED STOCK</td>
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<td>Series B Warrants:</td>
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<td>SERIES B WARRANTS</td>
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<td>Stock Options:</td>
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<td>Options Grants</td>
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<td>(6,651,025)</td>
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<td>Options available for Grant</td>
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<td>TOTAL FULLY DILUTED SHARES OUTS</td>
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<td>14,221,529</td>
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<td>56,886,116</td>
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* A 3 for 1 common stock dividend was issued at the close of the Series C financing in Sept 2011
** Assuming conversion of Preferred to common
INDEMNIFICATION AGREEMENT

THIS AGREEMENT (the “Agreement”) is made and entered into as of [●], between FitBit, Inc., a Delaware corporation (the “Company”), and [●] (“Indemnitee”).

WITNESSETH THAT:

WHEREAS, Indemnitee performs a valuable service for the Company; and

WHEREAS, the Board of Directors of the Company has adopted the Second Amended and Restated Bylaws, as amended from time to time (the “Bylaws”), providing for the indemnification of the officers and directors of the Company to the maximum extent authorized by Section 145 of the Delaware General Corporation Law, as amended (“Law”); and

WHEREAS, the Bylaws and the Law, by their nonexclusive nature, permit contracts between the Company and the officers or directors of the Company with respect to indemnification of such officers or directors; and

WHEREAS, in accordance with the authorization as provided by the Law, the Company may purchase and maintain a policy or policies of directors’ and officers’ liability insurance (“D & O Insurance”), covering certain liabilities which may be incurred by its officers or directors in the performance of their obligations to the Company; and

WHEREAS, in order to induce Indemnitee to continue to serve as an officer or director of the Company, the Company has determined and agreed to enter into this contract with Indemnitee.

NOW, THEREFORE, in consideration of Indemnitee’s service as an officer or director after the date hereof, the parties hereto agree as follows:

1. Indemnity of Indemnitee. The Company hereby agrees to hold harmless and indemnify Indemnitee to the full extent authorized or permitted by the provisions of the Law, as such may be amended from time to time, and Article VI, Section 6 of the Bylaws, as such may be amended. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

   (a) Proceedings Other Than Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(a) if, by reason of his Corporate Status (as hereinafter defined), he is, or is threatened to be made, a party to or participant in any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnitee shall be indemnified against all Expenses (as hereinafter defined), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him, or on his behalf, in connection with such Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.
(b) Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by him, or on his behalf, in connection with such Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged to be liable to the Company unless and to the extent that the Court of Chancery of the State of Delaware shall determine that such indemnification may be made.

(c) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he shall be indemnified to the maximum extent permitted by law against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, 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.

2. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company’s obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful under Delaware law.


   (a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee.
(b) The Company shall not enter into any settlement of any action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which the Law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

4. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

5. Advancement of Expenses. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee’s Corporate Status within ten (10) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by an undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free.

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Notwithstanding the foregoing, the obligation of the Company to advance Expenses pursuant to this Section 5 shall be subject to the condition that, if, when and to the extent that the Company determines that Indemnitee would not be permitted to be indemnified under applicable law, the Company shall be entitled to be reimbursed, within thirty (30) days of such determination, by Indemnitee (who hereby agrees to reimburse the Company) for all such amounts theretofore paid; provided, however, that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee should be indemnified under applicable law, any determination made by the Company that Indemnitee would not be permitted to be indemnified under applicable law shall not be binding and Indemnitee shall not be required to reimburse the Company for any advance of Expenses until a final judicial determination is made with respect thereto (and as to which all rights of appeal therefrom have been exhausted or lapsed).

6. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the Law and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) To obtain indemnification (including, but not limited to, the advancement of Expenses and contribution by the Company) under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that Indemnitee has requested indemnification.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination, if required by applicable law, with respect to Indemnitee’s entitlement thereto shall be made in the specific case by one of the following three methods, which shall be at the election of Indemnitee: (1) by a majority vote of the disinterested directors, even though less than a quorum, (2) by independent legal counsel in a written opinion or (3) by the stockholders.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(c). The Independent Counsel shall be selected by Indemnitee (unless Indemnitee requests that such selection be made by the Board of Directors). Indemnitee or the Company, as the case may be, may, within 10 days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, 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 13 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 a written objection is made and substantiated, the Independent Counsel 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 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other 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/or 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 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(e) Indemnitee shall be deemed to have acted in good faith if Indemnitee’s action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise (as hereinafter defined) in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(f) If the person, persons or entity empowered or selected under Section 6 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee’s statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 30-day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 6(g) shall not

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apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination, the Board of Directors or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

(g) Indemnitee shall cooperate with the person, persons or entity making such 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 which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board of Directors or stockholder of the Company shall act reasonably and in good faith in making a determination regarding the Indemnitee’s entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys’ fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee’s entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such action, suit or proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

7. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) of this Agreement within 90 days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by the Company of a written request therefor or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of his entitlement to such indemnification. Indemnitee shall commence such proceeding seeking an adjudication within
180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 7(a). The Company shall not oppose Indemnitee’s right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 6(b).

(c) If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of his rights under, or to recover damages for breach of, this Agreement, or to recover under any directors’ and officers’ liability insurance policies maintained by the Company, the Company shall pay on his behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 13 of this Agreement) actually and reasonably incurred by him in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement.

8. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification 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 certificate of incorporation of the Company, the Bylaws, any agreement, a vote of stockholders, a resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the Law, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the 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. 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. 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.

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(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies.

(c) 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.

(d) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

9. Exception to Right of Indemnification. Notwithstanding any other provision of this Agreement, Indemnitee shall not be entitled to indemnification under this Agreement with respect to any Proceeding brought by Indemnitee, or any claim therein, unless (a) the bringing of such Proceeding or making of such claim shall have been approved by the Board of Directors of the Company or (b) such Proceeding is being brought by Indemnitee to assert, interpret or enforce his rights under this Agreement.

10. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is an officer or director of the Company (or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any Proceeding (or any proceeding commenced under Section 7 hereof) by reason of his Corporate Status, whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (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), assigns, spouses, heirs, executors and personal and legal representatives.

11. Security. To the extent requested by Indemnitee and approved by the Board of Directors of the Company, the Company may at any time and from time to time provide security to Indemnitee for the Company’s obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.
12. Enforcement

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve as an officer or director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an officer or director of the Company.

(b) 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.

13. Definitions. For purposes of this Agreement:

(a) “Corporate Status” describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the express written request of the Company.

(b) “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.

(c) “Enterprise” shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request of the Company as a director, officer, employee, agent or fiduciary.

(d) “Expenses” shall include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees 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, participating, or being or preparing to be a witness in a Proceeding.

(e) “Independent Counsel” means a law firm, or a 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 with respect to matters concerning Indemnitee under this Agreement, or of 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. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.
(f) “Proceeding” includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of the fact that Indemnitee is or was an officer or director of the Company, by reason of any action taken by him or of any inaction on his part while acting as an officer or director of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust or other Enterprise; in each case whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his rights under this Agreement.

14. Severability. If any provision or provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, illegal or otherwise unenforceable for any reason whatsoever: (a) 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 that is not itself 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; and (b) 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. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice By Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.
17. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, or (ii) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed:

(a) If to Indemnitee, to the address set forth below Indemnitee signature hereto.

(b) If to the Company, to:

   150 Spear Street
   San Francisco, CA 94105
   Attention: James Park

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

18. Identical 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. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

19. Headings. 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.

20. Governing Law. The parties agree that this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware without application of the conflict of laws principles thereof.

21. Gender. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate.

[ Signature Page Follows ]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on and as of the day and year first above written.

COMPANY:

FitBit, Inc.

By: ________________________________
Name: ________________________________
Title: ________________________________

INDEMNITEE:

[Officer Name]

Address: ________________________________

______________________________

SIGNATURE PAGE TO INDEMNIFICATION AGREEMENT
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on and as of the day and year first above written.

COMPANY:
FitBit, Inc.

By: ____________________________
Name: __________________________
Title: __________________________

INDEMNITEE:

[Officer Name]

____________________________________
Address: ______________________________
____________________________________

SIGNATURE PAGE TO INDEMNIFICATION AGREEMENT
FITBIT, INC.

AMENDED AND RESTATED 2007 STOCK PLAN

1. Purposes of the Plan. The purposes of this 2007 Stock Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees and Consultants and to promote the success of the Company’s business. Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant of an option and subject to the applicable provisions of Section 422 of the Code and the regulations and interpretations promulgated thereunder. Stock purchase rights and Restricted Stock Units may also be granted under the Plan.

2. Definitions. As used herein, the following definitions shall apply:

(a) “Administrator” means the Board or its Committee appointed pursuant to Section 4 of the Plan.

(b) “Affiliate” means an entity other than a Subsidiary (as defined below) which, together with the Company, is under common control of a third person or entity.

(c) “Applicable Laws” means the legal requirements relating to the administration of stock option and restricted stock purchase plans, including under applicable U.S. state corporate laws, U.S. federal and applicable state securities laws, other U.S. federal and state laws, the Code, any Stock Exchange rules or regulations and the applicable laws, rules and regulations of any other country or jurisdiction where Options or Stock Purchase Rights or Restricted Stock Units are granted under the Plan, as such laws, rules, regulations and requirements shall be in place from time to time.

(d) “Board” means the Board of Directors of the Company.

(e) “Cause” for termination of a Participant’s Continuous Service Status will exist if the Participant is terminated by the Company for any of the following reasons: (i) Participant’s willful failure substantially to perform his or her duties and responsibilities to the Company or deliberate violation of a Company policy; (ii) Participant’s commission of any act of fraud, embezzlement, dishonesty or any other willful misconduct that has caused or is reasonably expected to result in material injury to the Company; (iii) unauthorized use or disclosure by Participant of any proprietary information or trade secrets of the Company or any other party to whom the Participant owes an obligation of nondisclosure as a result of his or her relationship with the Company; or (iv) Participant’s willful breach of any of his or her obligations under any written agreement or covenant with the Company. The determination as to whether a Participant is being terminated for Cause shall be made in good faith by the Company and shall be final and binding on the Participant. The foregoing definition does not in any way limit the Company’s ability to terminate a Participant’s employment or consulting relationship at any time as provided in Section 5(d) below, and the term “Company” will be interpreted to include any Subsidiary, Parent or Affiliate, as appropriate.
(f) “Change of Control” means (1) a sale of all or substantially all of the Company’s assets, or (2) any merger, consolidation or other business combination transaction of the Company with or into another corporation, entity or person, other than a transaction in which the holders of at least a majority of the shares of voting capital stock of the Company outstanding immediately prior to such transaction continue to hold (either by such shares remaining outstanding or by their being converted into shares of voting capital stock of the surviving entity) a majority of the total voting power represented by the shares of voting capital stock of the Company (or the surviving entity) outstanding immediately after such transaction, or (3) the direct or indirect acquisition (including by way of a tender or exchange offer) by any person, or persons acting as a group, of beneficial ownership or a right to acquire beneficial ownership of shares representing a majority of the voting power of the then outstanding shares of capital stock of the Company. For the avoidance of doubt, however, an equity or debt financing of the Company shall not be deemed to be a “Change of Control.”

(g) “Code” means the Internal Revenue Code of 1986, as amended.

(h) “Committee” means one or more committees or subcommittees of the Board appointed by the Board to administer the Plan in accordance with Section 4 below.

(i) “Common Stock” means the Common Stock of the Company.

(j) “Company” means FitBit, Inc., a Delaware corporation.

(k) “Consultant” means any person, including an advisor, who is engaged by the Company or any Parent, Subsidiary or Affiliate to render services and is compensated for such services, and any director of the Company whether compensated for such services or not.

(l) “Continuous Service Status” means the absence of any interruption or termination of service as an Employee or Consultant. Continuous Service Status as an Employee or Consultant shall not be considered interrupted in the case of: (i) sick leave; (ii) military leave; (iii) any other leave of absence approved by the Administrator, provided that such leave is for a period of not more than ninety (90) days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise pursuant to Company policy adopted from time to time; or (iv) in the case of transfers between locations of the Company or between the Company, its Parents, Subsidiaries, Affiliates or their respective successors. A change in status from an Employee to a Consultant or from a Consultant to an Employee will not constitute an interruption of Continuous Service Status.

(m) “Corporate Transaction” means a sale of all or substantially all of the Company’s assets, or a merger, consolidation or other capital reorganization or business combination transaction of the Company with or into another corporation, entity or person, or the direct or indirect acquisition (including by way of a tender or exchange offer) by any person, or persons acting as a group, of beneficial ownership or a right to acquire beneficial ownership of shares representing a majority of the voting power of the then outstanding shares of capital stock of the Company.
(n) “Director” means a member of the Board.
(o) “Employee” means any person employed by the Company or any Parent, Subsidiary or Affiliate, with the status of employment determined based upon such factors as are deemed appropriate by the Administrator in its discretion, subject to any requirements of the Code or the Applicable Laws. The payment by the Company of a director’s fee to a Director shall not be sufficient to constitute “employment” of such Director by the Company.
(q) “Fair Market Value” means, as of any date, the fair market value of the Common Stock, as determined by the Administrator in good faith on such basis as it deems appropriate and applied consistently with respect to Participants. Whenever possible, the determination of Fair Market Value shall be based upon the closing price for the Shares as reported in the Wall Street Journal for the applicable date.
(r) “Incentive Stock Option” means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code, as designated in the applicable Option Agreement.
(s) “Listed Security” means any security of the Company that is listed or approved for listing on a national securities exchange or designated or approved for designation as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.
(t) “Named Executive” means any individual who, on the last day of the Company’s fiscal year, is the chief executive officer of the Company (or is acting in such capacity) or among the four most highly compensated officers of the Company (other than the chief executive officer). Such officer status shall be determined pursuant to the executive compensation disclosure rules under the Exchange Act.
(u) “Nonstatutory Stock Option” means an Option not intended to qualify as an Incentive Stock Option, as designated in the applicable Option Agreement.
(v) “Option” means a stock option granted pursuant to the Plan.
(w) “Option Agreement” means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of an Option granted under the Plan and includes any documents attached to or incorporated into such Option Agreement, including, but not limited to, a notice of stock option grant and a form of exercise notice.
(x) “Option Exchange Program” means a program approved by the Administrator whereby outstanding Options are exchanged for Options with a lower exercise price or are amended to decrease the exercise price as a result of a decline in the Fair Market Value of the Common Stock.

(y) “Optioned Stock” means the Common Stock subject to an Option.

(z) “Optionee” means an Employee or Consultant who receives an Option.

(aa) “Parent” means a “parent corporation,” whether now or hereafter existing, as defined in Section 424(e) of the Code, or any successor provision.

(bb) “Participant” means any holder of one or more Options, Stock Purchase Rights, or Restricted Stock Units or the Shares issuable or issued upon exercise of such awards, under the Plan.

(cc) “Plan” means this 2007 Stock Plan.

(dd) “Reporting Person” means an officer, Director, or greater than ten percent stockholder of the Company within the meaning of Rule 16a-2 under the Exchange Act, who is required to file reports pursuant to Rule 16a-3 under the Exchange Act.

(ee) “Restricted Stock” means Shares of Common Stock acquired pursuant to a grant of a Stock Purchase Right under Section 11 below.

(ff) “Restricted Stock Purchase Agreement” means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of a Stock Purchase Right granted under the Plan and includes any documents attached to such agreement.

(gg) “Restricted Stock Unit” or “RSU” means restricted stock unit award granted to a Participant pursuant to Section 12.

(hh) “Restricted Stock Unit Agreement” means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of a Restricted Stock Unit granted under the Plan and includes any documents attached to such agreement.

(ii) “Rule 16b-3” means Rule 16b-3 promulgated under the Exchange Act, as amended from time to time, or any successor provision.

(jj) “Share” means a share of the Common Stock, as adjusted in accordance with Section 15 of the Plan.

(kk) “Stock Exchange” means any stock exchange or consolidated stock price reporting system on which prices for the Common Stock are quoted at any given time.
(ll) “Stock Purchase Right” means the right to purchase Common Stock pursuant to Section 11 below.

(mm) “Subsidiary” means a “subsidiary corporation,” whether now or hereafter existing, as defined in Section 424(f) of the Code, or any successor provision.

(nn) “Ten Percent Holder” means a person who owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary.

3. Stock Subject to the Plan. Subject to the provisions of Section 15 of the Plan, the maximum aggregate number of Shares that may be sold under the Plan is 40,594,287 Shares of Common Stock (after giving effect to the 10-for-1 forward stock split effective September 18, 2014). The Shares may be authorized, but unissued, or reacquired Common Stock. If an award should expire or become unexercisable for any reason without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares that were subject thereto shall, unless the Plan shall have been terminated, become available for future grant under the Plan. In addition, any Shares of Common Stock which are retained by the Company upon exercise of an award in order to satisfy the exercise or purchase price for such award or any withholding taxes due with respect to such exercise or purchase shall be treated as not issued and shall continue to be available under the Plan. Shares issued under the Plan and later repurchased by the Company pursuant to any repurchase right which the Company may have shall be available for future grant under the Plan.

4. Administration of the Plan.

(a) General. The Plan shall be administered by the Board or a Committee, or a combination thereof, as determined by the Board. The Plan may be administered by different administrative bodies with respect to different classes of Participants and, if permitted by the Applicable Laws, the Board may authorize one or more officers to make awards under the Plan.

(b) Committee Composition. If a Committee has been appointed pursuant to this Section 4, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of any Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies (however caused) and remove all members of a Committee and thereafter directly administer the Plan, all to the extent permitted by the Applicable Laws and, in the case of a Committee administering the Plan in accordance with the requirements of Rule 16b-3 or Section 162(m) of the Code, to the extent permitted or required by such provisions. The Committee shall in all events conform to any requirements of the Applicable Laws.

(c) Powers of the Administrator. Subject to the provisions of the Plan and in the case of a Committee, the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:
(i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2(q) of the Plan, provided that such determination shall be applied consistently with respect to Participants under the Plan;

(ii) to select the Employees and Consultants to whom Plan awards may from time to time be granted;

(iii) to determine whether and to what extent Plan awards are granted;

(iv) to determine the number of Shares of Common Stock to be covered by each award granted;

(v) to approve the form(s) of agreement(s) used under the Plan;

(vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder, which terms and conditions include but are not limited to the exercise or purchase price, the time or times when awards may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, any pro rata adjustment to vesting as a result of a Participant’s transitioning from full- to part-time service (or vice versa), and any restriction or limitation regarding any Option, Optioned Stock, Stock Purchase Right or Restricted Stock Unit, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vii) to determine whether and under what circumstances an Option may be settled in cash under Section 10(c) instead of Common Stock;

(viii) to implement an Option Exchange Program on such terms and conditions as the Administrator in its discretion deems appropriate, provided that no amendment or adjustment to an Option that would materially and adversely affect the rights of any Optionee shall be made without the prior written consent of the Optionee;

(ix) to adjust the vesting of an Option held by an Employee or Consultant as a result of a change in the terms or conditions under which such person is providing services to the Company;

(x) to construe and interpret the terms of the Plan and awards granted under the Plan, which constructions, interpretations and decisions shall be final and binding on all Participants; and

(xi) in order to fulfill the purposes of the Plan and without amending the Plan, to modify grants of Options, Stock Purchase Rights or Restricted Stock Units to Participants who are foreign nationals or employed outside of the United States in order to recognize differences in local law, tax policies or customs.
5. Eligibility.
   (a) Recipients of Grants. Nonstatutory Stock Options, Stock Purchase Rights and Restricted Stock Units may be granted to Employees and Consultants. Incentive Stock Options may be granted only to Employees, provided that Employees of Affiliates shall not be eligible to receive Incentive Stock Options.
   (b) Type of Option. Each Option shall be designated in the Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option.
   (c) ISO $100,000 Limitation. Notwithstanding any designation under Section 5(b), to the extent that the aggregate Fair Market Value of Shares with respect to which Options designated as Incentive Stock Options are exercisable for the first time by any Optionee during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds $100,000, such excess Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 5(c), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares subject to an Incentive Stock Option shall be determined as of the date of the grant of such Option.
   (d) No Employment Rights. The Plan shall not confer upon any Participant any right with respect to continuation of an employment or consulting relationship with the Company, nor shall it interfere in any way with such Participant’s right or the Company’s right to terminate the employment or consulting relationship at any time for any reason.

6. Term of Plan. The Plan shall become effective upon its adoption by the Board of Directors. It shall continue in effect for a term of ten (10) years unless sooner terminated under Section 17 of the Plan.

7. Term of Option. The term of each Option shall be the term stated in the Option Agreement; provided that the term shall be no more than ten years from the date of grant thereof or such shorter term as may be provided in the Option Agreement and provided further that, in the case of an Incentive Stock Option granted to a person who at the time of such grant is a Ten Percent Holder, the term of the Option shall be five years from the date of grant thereof or such shorter term as may be provided in the Option Agreement.

8. Reserved.

   (a) Exercise Price. The per Share exercise price for the Shares to be issued pursuant to exercise of an Option shall be such price as is determined by the Administrator and set forth in the Option Agreement, but shall be subject to the following:
      (i) In the case of an Incentive Stock Option
         (A) granted to an Employee who at the time of grant is a Ten Percent Holder, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant; or
         (B) granted to any other Employee, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.
(ii) In the case of a Nonstatutory Stock Option

(A) granted on any date on which the Common Stock is not a Listed Security to a person who is at the time of grant a Ten Percent Holder, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant if required by the Applicable Laws and, if not so required, shall be such price as is determined by the Administrator;

(B) granted on any date on which the Common Stock is not a Listed Security to any other eligible person, the per Share exercise price shall be no less than 85% of the Fair Market Value per Share on the date of grant if required by the Applicable Laws and, if not so required, shall be such price as is determined by the Administrator; or

(C) granted on any date on which the Common Stock is a Listed Security to any eligible person, the per Share Exercise Price shall be such price as determined by the Administrator provided that if such eligible person is, at the time of the grant of such Option, a Named Executive of the Company, the per share Exercise Price shall be no less than 100% of the Fair Market Value on the date of grant if such Option is intended to qualify as performance-based compensation under Section 162(m) of the Code.

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price other than as required above pursuant to a merger or other corporate transaction.

(b) Permissible Consideration. The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant) and may consist entirely of (1) cash; (2) check; (3) subject to any requirements of the Applicable Laws (including without limitation Section 153 of the Delaware General Corporation Law), delivery of Optionee’s promissory note having such recourse, interest, security and redemption provisions as the Administrator determines to be appropriate after taking into account the potential accounting consequences of permitting an Optionee to deliver a promissory note; (4) cancellation of indebtedness; (5) other Shares that have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which the Option is exercised, provided that in the case of Shares acquired, directly or indirectly, from the Company, such Shares must have been owned by the Optionee for more than six months on the date of surrender (or such other period as may be required to avoid the Company’s incurring an adverse accounting charge); (6) if, as of the date of exercise of an Option the Company then is permitting employees to engage in a “same-day sale” cashless brokered exercise program involving one or more brokers, through such a program that complies with the Applicable Laws (including without limitation the requirements of Regulation T and other applicable regulations promulgated by the Federal Reserve Board) and that ensures prompt delivery to the Company of the amount required to pay the exercise price and any applicable withholding taxes; or (7) any combination of the foregoing methods of payment. In making its determination as to the type of consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company and the Administrator may, in its sole discretion, refuse to accept a particular form of consideration at the time of any Option exercise.

(a) General.

(i) Exercisability. Any Option granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator, consistent with the term of the Plan and reflected in the Option Agreement, including vesting requirements and/or performance criteria with respect to the Company and/or the Optionee; provided however that, if required under the Applicable Laws, the Option (or Shares issued upon exercise of the Option) shall comply with the requirements of Section 260.140.41(f) and (k) of the Rules of the California Corporations Commissioner.

(ii) Leave of Absence. The Administrator shall have the discretion to determine whether and to what extent the vesting of Options shall be tolled during any unpaid leave of absence. In the event of military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given vesting credit with respect to Options to the same extent as would have applied had the Participant continued to provide services to the Company throughout the leave on the same terms as he or she was providing services immediately prior to such leave.

(iii) Minimum Exercise Requirements. An Option may not be exercised for a fraction of a Share. The Administrator may require that an Option be exercised as to a minimum number of Shares, provided that such requirement shall not prevent an Optionee from exercising the full number of Shares as to which the Option is then exercisable.

(iv) Procedures for and Results of Exercise. An Option shall be deemed exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Option by the person entitled to exercise the Option and the Company has received full payment for the Shares with respect to which the Option is exercised. Full payment may, as authorized by the Administrator, consist of any consideration and method of payment allowable under Section 9(b) of the Plan, provided that the Administrator may, in its sole discretion, refuse to accept any form of consideration at the time of any Option exercise.

Exercise of an Option in any manner shall result in a decrease in the number of Shares that thereafter may be available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(v) Rights as Stockholder. Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 15 of the Plan.

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(b) Termination of Employment or Consulting Relationship. Except as otherwise set forth in this Section 10(b), the Administrator shall establish and set forth in the applicable Option Agreement the terms and conditions upon which an Option shall remain exercisable, if at all, following termination of an Optionee’s Continuous Service Status, which provisions may be waived or modified by the Administrator at any time. Unless the Administrator otherwise provides in the Option Agreement, to the extent that the Optionee is not vested in Optioned Stock at the date of termination of his or her Continuous Service Status, or if the Optionee (or other person entitled to exercise the Option) does not exercise the Option to the extent so entitled within the time specified in the Option Agreement or below (as applicable), the Option shall terminate and the Optioned Stock underlying the unexercised portion of the Option shall revert to the Plan. In no event may any Option be exercised after the expiration of the Option term as set forth in the Option Agreement (and subject to Section 7).

The following provisions (1) shall apply to the extent an Option Agreement does not specify the terms and conditions upon which an Option shall terminate upon termination of an Optionee’s Continuous Service Status, and (2) establish the minimum post-termination exercise periods that may be set forth in an Option Agreement:

(i) Termination other than Upon Disability or Death or for Cause. In the event of termination of Optionee’s Continuous Service Status other than under the circumstances set forth in subsections (ii) through (v) below, such Optionee may exercise an Option for 30 days following such termination to the extent the Optionee was vested in the Optioned Stock as of the date of such termination. No termination shall be deemed to occur and this Section 10(b)(i) shall not apply if (i) the Optionee is a Consultant who becomes an Employee, or (ii) the Optionee is an Employee who becomes a Consultant.

(ii) Disability of Optionee. In the event of termination of an Optionee’s Continuous Service Status as a result of his or her disability (including a disability within the meaning of Section 22(e)(3) of the Code), such Optionee may exercise an Option at any time within six months following such termination to the extent the Optionee was vested in the Optioned Stock as of the date of such termination.

(iii) Death of Optionee. In the event of the death of an Optionee during the period of Continuous Service Status since the date of grant of the Option, or within thirty days following termination of Optionee’s Continuous Service Status, the Option may be exercised by Optionee’s estate or by a person who acquired the right to exercise the Option by bequest or inheritance at any time within twelve months following the date of death, but only to the extent the Optionee was vested in the Optioned Stock as of the date of death or, if earlier, the date the Optionee’s Continuous Service Status terminated.

(iv) Termination for Cause. In the event of termination of an Optionee’s Continuous Service Status for Cause, any Option (including any exercisable portion thereof) held by such Optionee shall immediately terminate in its entirety upon first notification to the Optionee of termination of the Optionee’s Continuous Service Status. If an Optionee’s employment or consulting relationship with the Company is suspended pending an investigation of whether the Optionee shall be terminated for Cause, all the Optionee’s rights under any Option likewise shall be suspended during the investigation period and the Optionee shall have

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no right to exercise any Option. This Section 10(b)(iv) shall apply with equal effect to vested Shares acquired upon exercise of an Option granted on any date on which the Common Stock is not a Listed Security to a person other than an officer, Director or Consultant, in that the Company shall have the right to repurchase such Shares from the Participant upon the following terms: (A) the repurchase is made within 90 days of termination of the Participant’s Continuous Service Status for Cause at the Fair Market Value of the Shares as of the date of termination, (B) consideration for the repurchase consists of cash or cancellation of purchase money indebtedness, and (C) the repurchase right terminates upon the effective date of the Company’s initial public offering of its Common Stock. With respect to vested Shares issued upon exercise of an Option granted to any officer, Director or Consultant, the Company’s right to repurchase such Shares upon termination of the Participant’s Continuous Service Status for Cause shall be made at the Participant’s original cost for the Shares and shall be effected pursuant to such terms and conditions, and at such time, as the Administrator shall determine. Nothing in this Section 10(b)(iv) shall in any way limit the Company’s right to purchase unvested Shares issued upon exercise of an Option as set forth in the applicable Option Agreement.

(c) **Buyout Provisions.** The Administrator may at any time offer to buy out for a payment in cash or Shares an Option previously granted under the Plan based on such terms and conditions as the Administrator shall establish and communicate to the Optionee at the time that such offer is made.

11. **Stock Purchase Rights.**

   (a) **Rights to Purchase.** When the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing of the terms, conditions and restrictions related to the offer, including the number of Shares that such person shall be entitled to purchase, the price to be paid, and the time within which such person must accept such offer. In the case of a Stock Purchase Right granted prior to the date, if any, on which the Common Stock becomes a Listed Security and if required by the Applicable Laws at that time, the purchase price of Shares subject to such Stock Purchase Rights shall not be less than 85% of the Fair Market Value of the Shares as of the date of the offer, or, in the case of a Ten Percent Holder, the price shall not be less than 100% of the Fair Market Value of the Shares as of the date of the offer. If the Applicable Laws do not impose the requirements set forth in the preceding sentence and with respect to any Stock Purchase Rights granted after the date, if any, on which the Common Stock becomes a Listed Security, the purchase price of Shares subject to Stock Purchase Rights shall be as determined by the Administrator. The offer to purchase Shares subject to Stock Purchase Rights shall be accepted by execution of a Restricted Stock Purchase Agreement in the form determined by the Administrator.

   (b) **Repurchase Option.**

      (i) **General.** Unless the Administrator determines otherwise, the Restricted Stock Purchase Agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser’s employment with the Company for any reason (including death or disability). Subject to any requirements of the Applicable Laws (including without limitation Section 260.140.42(h) of the Rules of the California Corporations Commissioner), the terms of the Company’s repurchase option (including without limitation the price at which, and the consideration for which, it may be exercised, and the events upon which it shall lapse) shall be as determined by the Administrator in its sole discretion and reflected in the Restricted Stock Purchase Agreement.
(ii) **Leave of Absence.** The Administrator shall have the discretion to determine whether and to what extent the lapsing of Company repurchase rights shall be tolled during any unpaid leave of absence. In the event of military leave, the lapsing of Company repurchase rights shall toll during any unpaid portion of such leave, provided that, upon a Participant’s returning from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given “vesting” credit with respect to Shares purchased pursuant to the Restricted Stock Purchase Agreement to the same extent as would have applied had the Participant continued to provide services to the Company throughout the leave on the same terms as he or she was providing services immediately prior to such leave.

(iii) **Termination for Cause.** In the event of termination of a Participant’s Continuous Service Status for Cause, the Company shall have the right to repurchase from the Participant vested Shares issued upon exercise of a Stock Purchase Right granted to any person other than an officer, Director or Consultant prior to the date, if any, upon which the Common Stock becomes a Listed Security upon the following terms: (A) the repurchase must be made within 90 days of termination of the Participant’s Continuous Service Status for Cause at the Fair Market Value of the Shares as of the date of termination, (B) consideration for the repurchase consists of cash or cancellation of purchase money indebtedness, and (C) the repurchase right terminates upon the effective date of the Company’s initial public offering of its Common Stock. With respect to vested Shares issued upon exercise of a Stock Purchase Right granted to any officer, Director or Consultant, the Company’s right to repurchase such Shares upon termination of such Participant’s Continuous Service Status for Cause shall be made at the Participant’s original cost for the Shares and shall be effected pursuant to such terms and conditions, and at such time, as the Administrator shall determine. Nothing in this Section 11(b)(ii) shall in any way limit the Company’s right to purchase unvested Shares as set forth in the applicable Restricted Stock Purchase Agreement.

(c) **Other Provisions.** The Restricted Stock Purchase Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion. In addition, the provisions of Restricted Stock Purchase Agreements need not be the same with respect to each purchaser.

(d) **Rights as a Stockholder.** Once the Stock Purchase Right is exercised, the purchaser shall have the rights equivalent to those of a stockholder, and shall be a stockholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 15 of the Plan.
12. Restricted Stock Units.

(a) Awards of Restricted Stock Units. A Restricted Stock Unit ("RSU") is an award covering a number of Shares that may be settled in cash, or by issuance of such Common Stock at a date in the future. No purchase price shall apply to an RSU settled in Common Stock. All grants of Restricted Stock Units will be evidenced by a Restricted Stock Unit Agreement that will be in such form (which need not be the same for each Participant) as the Administrator will from time to time approve, and will comply with and be subject to the terms and conditions of this Plan, and shall require that the Restricted Stock Units must expire no later than ten years following the date of grant.

(b) Form and Timing of Settlement. To the extent permissible under the applicable law, the Administrator may permit a Participant to defer payment under a RSU to a date or dates after the RSU is earned, provided that the terms of the RSU and any deferral satisfy the requirements of Section 409A of the Code (or any successor) and any regulation or rulings promulgated thereunder. Payment may be made in the form of cash or whole Shares or a combination thereof, all as the Administrator determines.


(a) As a condition of the grant, vesting or exercise of an Option or Stock Purchase Right or settlement of a Restricted Stock Unit granted under the Plan, the Participant (or in the case of the Participant’s death, the person exercising the Option or Stock Purchase Right or receiving Shares on settlement of a Restricted Stock Unit) shall make such arrangements as the Administrator may require for the satisfaction of any applicable federal, state, local or foreign withholding tax obligations that may arise in connection with such grant, vesting or exercise of the Option or Stock Purchase Right or Restricted Stock Unit or the issuance of Shares. The Company shall not be required to issue any Shares under the Plan until such obligations are satisfied. If the Administrator allows the withholding or surrender of Shares to satisfy a Participant’s tax withholding obligations under this Section 13 (whether pursuant to Section 13(c), (d) or (e), or otherwise), the Administrator shall not allow Shares to be withheld in an amount that exceeds the minimum statutory withholding rates for federal and state tax purposes, including payroll taxes.

(b) In the case of an Employee and in the absence of any other arrangement, the Employee shall be deemed to have directed the Company to withhold or collect from his or her compensation an amount sufficient to satisfy such tax obligations from the next payroll payment otherwise payable after the date of an exercise of the Option or Stock Purchase Right or vesting or settlement of a Restricted Stock Unit.

(c) This Section 13(c) shall apply only after the date, if any, upon which the Common Stock becomes a Listed Security. In the case of Participant other than an Employee (or in the case of an Employee where the next payroll payment is not sufficient to satisfy such tax obligations, with respect to any remaining tax obligations), in the absence of any other arrangement and to the extent permitted under the Applicable Laws, the Participant shall be deemed to have elected to have the Company withhold from the Shares to be issued upon exercise of the Option or Stock Purchase Right or vesting or settlement of a Restricted Stock Unit that number of Shares having a Fair Market Value determined as of the applicable Tax Date.
(as defined below) equal to the amount required to be withheld. For purposes of this Section 13, the Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined under the Applicable Laws (the “Tax Date”).

(d) If permitted by the Administrator, in its discretion, a Participant may satisfy his or her tax withholding obligations upon exercise of an Option or Stock Purchase Right or vesting or settlement of a Restricted Stock Unit by surrendering to the Company Shares that have a Fair Market Value determined as of the applicable Tax Date equal to the amount required to be withheld. In the case of shares previously acquired from the Company that are surrendered under this Section 13(d), such Shares must have been owned by the Participant for more than six (6) months on the date of surrender (or such other period of time as is required for the Company to avoid adverse accounting charges).

(e) Any election or deemed election by a Participant to have Shares withheld to satisfy tax withholding obligations under Section 13(c) or (d) above shall be irrevocable as to the particular Shares as to which the election is made and shall be subject to the consent or disapproval of the Administrator. Any election by a Participant under Section 13(d) above must be made on or prior to the applicable Tax Date.

(f) In the event an election to have Shares withheld is made by a Participant and the Tax Date is deferred under Section 83 of the Code because no election is filed under Section 83(b) of the Code, the Participant shall receive the full number of Shares with respect to which the Option or Stock Purchase Right is exercised but such Participant shall be unconditionally obligated to tender back to the Company the proper number of Shares on the Tax Date.

14. Non-Transferability of Options, Stock Purchase Rights and Restricted Stock Units.

(a) General. Except as set forth in this Section 14, an Option, Stock Purchase Right or Restricted Stock Unit may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution. The designation of a beneficiary by an Optionee will not constitute a transfer. An Option, Stock Purchase Right or Restricted Stock Unit may be exercised, during the lifetime of the holder of an Option or Stock Purchase Right, only by such holder or a transferee permitted by this Section 14.

(b) Limited Transferability Rights. Notwithstanding anything else in this Section 14, the Administrator may in its discretion grant Nonstatutory Stock Options that may be transferred by instrument to an inter vivos or testamentary trust in which the Options are to be passed to beneficiaries upon the death of the trustor (settlor) or by gift or pursuant to domestic relations orders to “Immediate Family Members” (as defined below) of the Optionee. “Immediate Family” means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law (including adoptive relationships), a trust in which these persons have more than fifty percent of the beneficial interest, a foundation in which these persons (or the Optionee) control the management of assets, and any other entity in which these persons (or the Optionee) own more than fifty percent of the voting interests.
15. Adjustments Upon Changes in Capitalization, Merger or Certain Other Transactions.

(a) Changes in Capitalization. Subject to any action required under Applicable Laws by the stockholders of the Company, the number of Shares of Common Stock covered by each outstanding award, and the number of Shares of Common Stock that have been authorized for issuance under the Plan but as to which no awards have yet been granted or that have been returned to the Plan upon cancellation or expiration of an award, as well as the price per Share of Common Stock covered by each such outstanding award, shall be proportionately adjusted for any increase or decrease in the number of issued Shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination, recapitalization or reclassification of the Common Stock, or any other increase or decrease in the number of issued Shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been “effected without receipt of consideration.” Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares of Common Stock subject to an award.

(b) Dissolution or Liquidation. In the event of the dissolution or liquidation of the Company, each Option, Stock Purchase Right and Restricted Stock Unit will terminate immediately prior to the consummation of such action, unless otherwise determined by the Administrator.

(c) Corporate Transaction; Change of Control.

(i) In the event of a Corporate Transaction (other than a Change of Control), each outstanding Option, Stock Purchase Right and Restricted Stock Unit shall be assumed or an equivalent option or right shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation (the “Successor Corporation”), unless the Successor Corporation does not agree to assume the award or to substitute an equivalent option or right, in which case such Option, Stock Purchase Right or Restricted Stock Unit shall terminate upon the consummation of the transaction.

For purposes of this Section 15(c), an Option, Stock Purchase Right or Restricted Stock Unit shall be considered assumed, without limitation, if, at the time of issuance of the stock or other consideration upon a Corporate Transaction, each holder of an Option, Stock Purchase Right or Restricted Stock Unit would be entitled to receive upon exercise of the award the same number and kind of shares of stock of the same amount of property, cash or securities as such holder would have been entitled to receive upon the occurrence of the transaction if the holder had been, immediately prior to such transaction, the holder of the number of Shares of Common Stock covered by the award at such time (after giving effect to any adjustments in the number of Shares covered by the Option, Stock Purchase Right or Restricted Stock Unit as provided for in this Section 15); provided that if such consideration received in the transaction is not solely common stock of the Successor Corporation, the Administrator may, with the consent
of the Successor Corporation, provide for the consideration to be received upon exercise or settlement of the award to be solely common stock of the Successor Corporation equal to the Fair Market Value of the per Share consideration received by holders of Common Stock in the transaction.

(ii) Notwithstanding any other provision of the Plan, in the event of a Change of Control, the Board, in its discretion, may take one or more of the following actions: (i) provide for the acceleration of any time period relating to the exercise or realization of an award. (ii) provide for the purchase of an award upon the Participant’s request for an amount of cash or other property that could have been received upon the exercise or realization of an award immediately prior to the consummation of the Change of Control, had the award been currently exercisable or payable, (iii) adjust the terms of the award in a manner determined by the Board, (iv) cause the award to be assumed, or new rights substituted therefor, by another entity, or (v) make such other provision as the Board may consider equitable and in the best interests of the Company.

(d) **Certain Distributions.** In the event of any distribution to the Company’s stockholders of securities of any other entity or other assets (other than dividends payable in cash or stock of the Company) without receipt of consideration by the Company, the Administrator may, in its discretion, appropriately adjust the price per Share of Common Stock covered by each outstanding Option or Stock Purchase Right to reflect the effect of such distribution.

16. **Time of Granting Options, Stock Purchase Rights and Restricted Stock Units.** The date of grant of an Option, Stock Purchase Right or Restricted Stock Unit shall, for all purposes, be the date on which the Administrator makes the determination granting such Option, Stock Purchase Right or Restricted Stock Unit, or such other date as is determined by the Administrator, provided that in the case of any Incentive Stock Option, the grant date shall be the later of the date on which the Administrator makes the determination granting such Incentive Stock Option or the date of commencement of the Optionee’s employment relationship with the Company. Notice of the determination shall be given to each Employee or Consultant to whom an Option, Stock Purchase Right or Restricted Stock Unit is so granted within a reasonable time after the date of such grant.

17. **Amendment and Termination of the Plan.**

(a) **Authority to Amend or Terminate.** The Board may at any time amend, alter, suspend or discontinue the Plan, but no amendment, alteration, suspension or discontinuation (other than an adjustment pursuant to Section 15 above) shall be made that would materially and adversely affect the rights of any Optionee or holder of Stock Purchase Rights or Restricted Stock Units under any outstanding grant, without his or her consent. In addition, to the extent necessary and desirable to comply with the Applicable Laws, the Company shall obtain stockholder approval of any Plan amendment in such a manner and to such a degree as required. Notwithstanding any other provision of the Plan to the contrary, the Board may, in its sole and absolute discretion and without the consent of any Optionee, amend the Plan or any Option, Stock Purchase Right or Restricted Stock Unit, to take effect retroactively or otherwise, as it deems necessary or advisable for the purpose of conforming the Plan or such Option, Stock Purchase Right or Restricted Stock Unit to any present or future law, regulation or rule applicable to the Plan, including, but not limited to, Section 409A of the Code.
(b) **Effect of Amendment or Termination.** Except as to amendments which the Administrator has the authority under the Plan to make unilaterally, no amendment or termination of the Plan shall materially and adversely affect Options, Stock Purchase Rights or Restricted Stock Units already granted, unless mutually agreed otherwise between the Optionee or holder of the Stock Purchase Rights or Restricted Stock Units and the Administrator, which agreement must be in writing and signed by the Optionee or holder and the Company.

18. **Conditions Upon Issuance of Shares.** Notwithstanding any other provision of the Plan or any agreement entered into by the Company pursuant to the Plan, the Company shall not be obligated, and shall have no liability for failure, to issue or deliver any Shares under the Plan unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. As a condition to the exercise of an Option or Stock Purchase Right, or settlement of a Restricted Stock Unit, the Company may require the person exercising the award to represent and warrant at the time of any such exercise or settlement that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by law. Shares issued upon exercise or settlement of awards granted prior to the date on which the Common Stock becomes a Listed Security shall be subject to a right of first refusal in favor of the Company pursuant to which the Participant will be required to offer Shares to the Company before selling or transferring them to any third party on such terms and subject to such conditions as is reflected in the applicable Option Agreement, Restricted Stock Purchase Agreement or Restricted Stock Unit Agreement.

19. **Reservation of Shares.** The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

20. **Agreements.** Options, Stock Purchase Rights and Restricted Stock Units shall be evidenced by Option Agreements, Restricted Stock Purchase Agreements or Restricted Stock Unit Agreements, respectively, in such form(s) as the Administrator shall from time to time approve.

21. **Stockholder Approval.** If required by the Applicable Laws, continuance of the Plan shall be subject to approval by the stockholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such stockholder approval shall be obtained in the manner and to the degree required under the Applicable Laws.

22. **Information and Documents to Optionees and Purchasers.** Prior to the date, if any, upon which the Common Stock becomes a Listed Security and if required by the Applicable Laws, the Company shall provide financial statements at least annually to each Optionee and to each individual who acquired Shares pursuant to the Plan, during the period such Optionee or purchaser has one or more Options, Stock Purchase Rights or Restricted Stock Units outstanding, and in the case of an individual who acquired Shares pursuant to the Plan, during the period such individual owns such Shares. The Company shall not be required to provide such information if the issuance of Options, Stock Purchase Rights or Restricted Stock Units under the Plan is limited to key employees whose duties in connection with the Company assure their access to equivalent information.
23. Effective Date of Plan. The Plan was originally adopted by the Board on September 20, 2007 and by the stockholders of the Company on October 30, 2007 and became effective on that date and was then subsequently amended and restated on September 12, 2008, August 30, 2010, September 27, 2011, March 22, 2013, May 23, 2013, May 7, 2014, August 7, 2014. Options or Stock Purchase Rights may be granted under the Plan at any time on or after the effective date. Amendments to the Plan not requiring stockholder approval shall become effective when adopted by the Board; amendments requiring stockholder approval (as provided in Section 17 hereof) shall become effective when adopted by the Board, but no Option granted after the date of such amendment may be exercised, and no Option, Stock Purchase Rights or Restricted Stock Units may be granted or shares issued after the date of such amendment (to the extent that such amendment to the Plan was required to enable the Company to grant such Option, Stock Purchase Rights or Restricted Stock Units or issue such shares to a particular person) until such amendment is approved by the Company’s stockholders. If such stockholder approval is not obtained within twelve (12) months of the Board’s adoption of such amendment, all Options and Restricted Stock Units granted on or after the date of such amendment shall terminate and cease to be outstanding to the extent that such amendment was required to enable the Company to grant such award to a particular person. Subject to such limitations, Stock Purchase Rights may be granted and shares may be issued under the Plan at any time after the effective date and before the date fixed for termination of the Plan.
You have been granted an option to purchase Common Stock of FitBit, Inc. (the “Company”) as follows:

<table>
<thead>
<tr>
<th><strong>Board Approval Date:</strong></th>
<th>[DATE]</th>
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</thead>
<tbody>
<tr>
<td><strong>Date of Grant (Later of Board Approval Date or Commencement of Employment/Consulting):</strong></td>
<td>[DATE]</td>
</tr>
<tr>
<td><strong>Exercise Price Per Share:</strong></td>
<td>[PRICE]</td>
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<tr>
<td><strong>Total Number of Shares Granted:</strong></td>
<td>[SHARES]</td>
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<tr>
<td><strong>Total Exercise Price:</strong></td>
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<td><strong>Type of Option:</strong></td>
<td>[TYPE]</td>
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<tr>
<td><strong>Expiration Date:</strong></td>
<td>[EXPIRATION DATE]</td>
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<tr>
<td><strong>Vesting Commencement Date:</strong></td>
<td>[VEST START DATE]</td>
</tr>
<tr>
<td><strong>Vesting Exercise Schedule:</strong></td>
<td>[VEST SCHEDULE]</td>
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</tbody>
</table>

**Termination Period:**

This Option may be exercised for 3 months after termination of your employment or consulting relationship except as set out in Section 5 of the Stock Option Agreement (but in no event later than the Expiration Date).

You are responsible for keeping track of these exercise periods following termination for any reason of your service relationship with the Company. The Company will not provide further notice of such periods.

**Transferability:**

This Option may not be transferred.

By your signature and the signature of the Company’s representative below, you and the Company agree that this option is granted under and governed by the terms and conditions of the FitBit, Inc. Amended and Restated 2007 Stock Plan and the Stock Option Agreement, both of which are attached and made a part of this document.
In addition, you agree and acknowledge that your rights to any Shares underlying the Option will be earned only as you provide services to the Company over time, that the grant of the Option is not as consideration for services you rendered to the Company prior to your Vesting Commencement Date, and that nothing in this Notice or the attached documents confers upon you any right to continue your employment or consulting relationship with the Company for any period of time, nor does it interfere in any way with your right or the Company’s right to terminate that relationship at any time, for any reason, with or without cause.

FitBit, Inc.

[NAME]

By:
James Park, Co-Founder and CEO
1. **Grant of Option.** FitBit, Inc., a Delaware corporation (the “Company”), hereby grants to __________________________ (“Optionee”), an option (the “Option”) to purchase the total number of shares of Common Stock (the “Shares”) set forth in the Notice of Stock Option Grant relating to this Option, which has been provided to Optionee (the “Notice”), at the exercise price per Share set forth in the Notice (the “Exercise Price”) subject to the terms, definitions and provisions of the FitBit, Inc. Amended and Restated 2007 Stock Plan (the “Plan”) adopted by the Company, which is incorporated in this Agreement by reference. Unless otherwise defined in this Agreement, the terms used in this Agreement shall have the meanings defined in the Plan.

2. **Designation of Option.** This Option is intended to be an Incentive Stock Option as defined in Section 422 of the Code only to the extent so designated in the Notice, and to the extent it is not so designated or to the extent the Option does not qualify as an Incentive Stock Option, it is intended to be a Nonstatutory Stock Option.

   Notwithstanding the above, if designated as an Incentive Stock Option, in the event that the Shares subject to this Option (and all other Incentive Stock Options granted to Optionee by the Company or any Parent or Subsidiary, including under other plans of the Company) that first become exercisable in any calendar year have an aggregate fair market value (determined for each Share as of the date of grant of the option covering such Share) in excess of $100,000, the Shares in excess of $100,000 shall be treated as subject to a Nonstatutory Stock Option, in accordance with Section 5(c) of the Plan.

3. **Exercise of Option.** This Option shall be exercisable during its term in accordance with the Vesting Schedule and with the provisions of Section 10 of the Plan as follows:

   (a) **Right to Exercise.**

      (i) This Option may not be exercised for a fraction of a share.

      (ii) In the event of Optionee’s death, disability or other termination of employment, the exercisability of the Option is governed by Section 5 below, subject to the limitations contained in this Section 3.

      (iii) In no event may this Option be exercised after the Expiration Date of the Option as set forth in the Notice.
(b) **Method of Exercise.**

(i) This Option shall be exercisable by execution and delivery of the Exercise Notice andRestricted Stock Purchase Agreement attached hereto as Exhibit A (the “Exercise Agreement”) or of any other form of written notice approved for such purpose by the Company which shall state Optionee’s election to exercise the Option, the number of Shares in respect of which the Option is being exercised, and such other representations and agreements as to the holder’s investment intent with respect to such Shares as may be required by the Company pursuant to the provisions of the Plan. Such written notice shall be signed by Optionee and shall be delivered to the Company by such means as are determined by the Plan Administrator in its discretion to constitute adequate delivery. The written notice shall be accompanied by payment of the Exercise Price. This Option shall be deemed to be exercised upon receipt by the Company of such written notice accompanied by the Exercise Price.

(ii) As a condition to the exercise of this Option and as further set forth in Section 12 of the Plan, Optionee agrees to make adequate provision for federal, state or other tax withholding obligations, if any, which arise upon the exercise of the Option whether by withholding, direct payment to the Company, or otherwise. Optionee also agrees to make adequate and timely provision for federal, state, or other tax withholding obligations, if any, which arise from the vesting of the Option or the disposition of shares.

(iii) The Company is not obligated, and will have no liability for failure, to issue or deliver any Shares upon exercise of the Option unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. This Option may not be exercised until such time as the Plan has been approved by the stockholders of the Company, or if the issuance of such Shares upon such exercise or the method of payment of consideration for such shares would constitute a violation of any applicable federal or state securities or other law or regulation, including any rule under Part 221 of Title 12 of the Code of Federal Regulations as promulgated by the Federal Reserve Board. As a condition to the exercise of this Option, the Company may require Optionee to make any representation and warranty to the Company as may be required by the Applicable Laws.

4. **Method of Payment.** Payment of the Exercise Price shall be by any of the following, or a combination of the following, at the election of Optionee:

   (a) cash or check;

   (b) cancellation of indebtedness;

   (c) prior to the date, if any, upon which the Common Stock becomes a Listed Security, by surrender of other shares of Common Stock of the Company that have an aggregate Fair Market Value on the date of surrender equal to the Exercise Price of the Shares as to which the Option is being exercised. In the case of shares acquired directly or indirectly from the Company, such shares must have been owned by Optionee for more than six (6) months on the date of surrender (or such other period of time as is necessary to avoid the Company’s incurring adverse accounting charges);
(d) following the date, if any, upon which the Common Stock is a Listed Security, and if the Company is at such time permitting “same day sale” cashless brokered exercises and to the extent permitted by Applicable Laws, delivery of a properly executed exercise notice together with irrevocable instructions to a broker participating in such cashless brokered exercise program to deliver promptly to the Company the amount required to pay the exercise price (and applicable withholding taxes);

provided that, the Administrator may, in its sole discretion, refuse to accept a particular form of consideration at the time of exercise.

5. Termination of Relationship. Following the date of termination of Optionee’s Continuous Service Status for any reason (the “Termination Date”), Optionee may exercise the Option only as set forth in this Section 5. To the extent that Optionee is not entitled to exercise this Option as of the Termination Date, or if Optionee does not exercise this Option within the applicable period set forth below, the Option shall terminate in its entirety. In no event, may any Option be exercised after the Expiration Date of the Option as set forth below.

(a) Termination. In the event of termination of Optionee’s Continuous Service Status other than as a result of Optionee’s Disability or death or for Cause (as defined in the Plan), Optionee may, to the extent Optionee is vested in the Option Shares at the date of such termination (the “Termination Date”), exercise this Option during the three (3) month period immediately following the Termination Date.

(b) Other Terminations. In connection with any termination other than a termination covered by Section 5(a), Optionee may exercise the Option only as described below:

(i) Termination upon Disability of Optionee. In the event of termination of Optionee’s Continuous Service Status as a result of Optionee’s Disability, Optionee may, but only within six months from the Termination Date, exercise this Option to the extent Optionee was vested in the Option Shares as of such Termination Date. For purposes of this Agreement, “Disability” means the Optionee’s inability, in the opinion of a qualified physician acceptable to the Company, to perform the major duties of Optionee’s position because of his or her sickness or injury. Any exercise of this Option beyond (i) three (3) months after Optionee’s termination of Continuous Service Status, when such termination is for any reason other than Optionee’s death or disability, within the meaning of Section 22(e)(3) of the Code; or (ii) twelve (12) months after Optionee’s termination of Continuous Service Status, when such termination is for Optionee’s disability, within the meaning of Section 22(e)(3) of the Code, is deemed to be a Nonstatutory Stock Option.

(ii) Death of Optionee. In the event of the death of Optionee (a) during the term of this Option and while an Employee or Consultant of the Company and having been in Continuous Service Status since the date of grant of the Option, or (b) within thirty (30) days after Optionee’s Termination Date, the Option may be exercised at any time within twelve months following the date of death by Optionee’s estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent Optionee was vested in the Option as of the Termination Date.
(iii) **Termination for Cause.** In the event Optionee’s Continuous Service Status is terminated for Cause, the Option shall terminate immediately upon such termination for Cause as set forth in Section 10(b)(iv) of the Plan. In the event Optionee’s employment or consulting relationship with the Company is suspended pending investigation of whether such relationship shall be terminated for Cause, all Optionee’s rights under the Option, including the right to exercise the Option, shall be suspended during the investigation period, also as set forth in Section 10(b)(iv) of the Plan.

6. **Non-Transferability of Option.** This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee only by him or her. The designation of a beneficiary by Optionee will not constitute a transfer. The terms of this Option shall be binding upon the executors, administrators, heirs, successors and assigns of Optionee.

7. **Tax Consequences.** Below is a brief summary as of the date of this Option of certain of the United States federal tax consequences of exercise of this Option and disposition of the Shares under the laws in effect as of the Date of Grant. THIS SUMMARY IS INCOMPLETE, AND THE TAX LAWS AND REGULATIONS ARE SUBJECT TO CHANGE. OPTIONEE SHOULD CONSULT A TAX ADVISER BEFORE EXERCISING THIS OPTION OR DISPOSING OF THE SHARES.

(a) **Incentive Stock Option.**

(i) **Tax Treatment upon Exercise and Sale of Shares.** If this Option qualifies as an Incentive Stock Option, there will be no regular federal income tax liability upon the exercise of the Option, although the excess, if any, of the fair market value of the Shares on the date of exercise over the Exercise Price will be treated as an adjustment to the alternative minimum tax for federal tax purposes and may subject Optionee to the alternative minimum tax in the year of exercise. If Shares issued upon exercise of an Incentive Stock Option are held for at least one year after exercise and are disposed of at least two years after the Option grant date, any gain realized on disposition of the Shares will also be treated as long-term capital gain for federal income tax purposes. If Shares issued upon exercise of an Incentive Stock Option are disposed of within such one-year period or within two years after the Option grant date, any gain realized on such disposition will be treated as compensation income (taxable at ordinary income rates) to the extent of the difference between the Exercise Price and the lesser of (i) the fair market value of the Shares on the date of exercise, or (ii) the sale price of the Shares.

(ii) **Notice of Disqualifying Dispositions.** With respect to any Shares issued upon exercise of an Incentive Stock Option, if Optionee sells or otherwise disposes of such Shares on or before the later of (i) the date two years after the Option grant date, or (ii) the date one year after the date of exercise, Optionee shall immediately notify the Company in writing of such disposition. Optionee acknowledges and agrees that he or she may be subject to income tax withholding by the Company on the compensation income recognized by Optionee from the early disposition by payment in cash or out of the current earnings paid to Optionee.
(b) **Nonstatutory Stock Option**. If this Option does not qualify as an Incentive Stock Option, there may be a regular federal (and state) income tax liability upon the exercise of the Option. Optionee will be treated as having received compensation income (taxable at ordinary income tax rates) equal to the excess, if any, of the fair market value of the Shares on the date of exercise over the Exercise Price. If Optionee is an Employee, the Company will be required to withhold from Optionee’s compensation or collect from Optionee and pay to the applicable taxing authorities an amount equal to a percentage of this compensation income at the time of exercise. If Shares issued upon exercise of a Nonstatutory Stock Option are held for at least one year, any gain realized on disposition of the Shares will be treated as long-term capital gain for federal income tax purposes.

8. **Lock-Up Agreement**. In connection with the initial public offering of the Company’s securities and upon request of the Company or the underwriters managing any underwritten offering of the Company’s securities, Optionee hereby agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however and whenever acquired (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed 180 days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the public offering.

9. **Effect of Change in Control**. In the event of a Change in Control, the surviving, continuing, successor, or purchasing entity or parent thereof, as the case may be (the “**Acquiror**”), may, without the consent of the Optionee, assume or continue in full force and effect the Company’s rights and obligations under the Option or any portion thereof or substitute for the Option or any portion thereof a substantially equivalent option for the Acquiror’s stock. For purposes of this Section, the Option shall be deemed assumed if, following the Change in Control, the Option confers the right to receive, subject to the terms and conditions of the Plan and this Agreement, for each Share subject to the Option immediately prior to the Change in Control, the consideration (whether stock, cash, other securities or property or a combination thereof) to which a holder of a Share on the effective date of the Change in Control was entitled; provided, however, that if such consideration is not solely common stock of the Acquiror, the Board may, with the consent of the Acquiror, provide for the consideration to be received upon the exercise of the Option, for each Share subject to the Option, to consist solely of common stock of the Acquiror equal in Fair Market Value to the per share consideration received by holders of Shares pursuant to the Change in Control. The Option shall terminate without consideration and cease to be outstanding effective as of the time of consummation of the Change in Control to the extent that the Option is neither assumed or continued by the Acquiror in connection with the Change in Control nor exercised as of the date of the Change in Control. Notwithstanding the foregoing, shares acquired upon exercise of the Option prior to the Change in Control and any consideration received pursuant to the Change in Control with respect to such shares shall continue to be subject to all applicable provisions of this Agreement except as otherwise provided herein.
10. Adjustments for Changes in Capital Structure. Subject to any required action by the stockholders of the Company, in the event of any change in the Shares effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Shares (excluding normal cash dividends) that has a material effect on the Fair Market Value of Shares, proportionate adjustments shall be made in the number of shares and the Exercise Price subject to the Option. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as “effected without receipt of consideration by the Company.” Any fractional share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number and the Exercise Price shall be rounded up to the nearest whole cent. In no event may the Exercise Price be decreased to an amount less than the par value, if any, of the stock subject to the Option. Such adjustments shall be determined by the Board, and its determination shall be final, binding and conclusive.

11. Rights as a Stockholder, Director, Employee or Consultant. The Optionee shall have no rights as a stockholder with respect to any Shares covered by the Option until the date of the issuance of the Shares for which the Option has been exercised (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date the shares are issued, except as provided in Section 10. If the Optionee is an Employee, the Optionee understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between the Company and the Optionee, the Optionee’s employment is “at will” and is for no specified term. Nothing in this Agreement shall confer upon the Optionee any right to continue in the service of a Company or interfere in any way with any right of the Company to terminate the Optionee’s service as a Director, an Employee or Consultant, as the case may be, at any time.

12. Effect of Agreement. Optionee acknowledges receipt of a copy of the Plan and represents that he or she is familiar with the terms and provisions thereof (and has had an opportunity to consult counsel regarding the Option terms), and hereby accepts this Option and agrees to be bound by its contractual terms as set forth herein and in the Plan. Optionee hereby agrees to accept as binding, conclusive and final all decisions and interpretations of the Plan Administrator regarding any questions relating to the Option. In the event of a conflict between the terms and provisions of the Plan and the terms and provisions of the Notice and this Agreement, the Plan terms and provisions shall prevail. The Option, including the Plan, constitutes the entire agreement between Optionee and the Company on the subject matter hereof and supersedes all proposals, written or oral, and all other communications between the parties relating to such subject matter.

(a) Further Instruments. The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

(b) Binding Effect. Subject to the restrictions on transfer set forth herein, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(c) Termination or Amendment. The Board may terminate or amend the Plan or the Option at any time; provided, however, that except as provided in Section 9 in connection with a Change in Control, no such termination or amendment may adversely affect the Option or any unexercised portion hereof without the consent of the Optionee unless such termination or amendment is necessary to comply with any applicable law or government regulation. No amendment or addition to this Agreement shall be effective unless in writing. Except as provided by the next sentence, no amendment, suspension or termination of the Plan may adversely affect any then outstanding Option without the consent of the Optionee. Notwithstanding any other provision of the Plan or this Agreement to the contrary, the Board may, in its sole and absolute discretion and without the consent of any participant, amend the Plan or any Agreement, to take effect retroactively or otherwise, as it deems necessary or advisable for the purpose of conforming the Plan or such Agreement to any present or future law, regulation or rule applicable to the Plan or Agreement, including, but not limited to, Section 409A of the Code.

(d) Delivery of Documents and Notices. Any document relating to participation in the Plan, or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery, electronic delivery at the e-mail address, if any, provided for the Optionee by the Company, or, upon deposit in the U.S. Post Office or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service with postage and fees prepaid, addressed to the other party at the address of such party set forth in the Notice or at such other address as such party may designate in writing from time to time to the other party.

(i) Description of Electronic Delivery. The Plan documents, which may include but do not necessarily include: the Plan, the Notice, this Agreement, and any reports of the Company provided generally to the Company’s shareholders, may be delivered to the Optionee electronically. In addition, if permitted by the Company, the Optionee may deliver electronically the Notice and Exercise Notice called for by Section 3(b) to the Company or to such third party involved in administering the Plan as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company.
(ii) **Inspection Rights.** Optionee acknowledges and understands that, but for the waiver made herein, Optionee would be entitled, upon written demand under oath stating the purpose thereof, to inspect for any proper purpose, and to make copies and extracts from, the Company’s stock ledger, a list of its stockholders, and its other books and records, and the books and records of subsidiaries of the Company, if any, under the circumstances and in the manner provided in Section 220 of the General Corporation Law of Delaware (any and all such rights, and any and all such other rights of Optionee as may be provided for in Section 220, the “Inspection Rights”). In light of the foregoing, until the first sale of common stock of the Company to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act, Optionee hereby unconditionally and irrevocably waives the Inspection Rights, whether such Inspection Rights would be exercised or pursued directly or indirectly pursuant to Section 220 or otherwise, and covenants and agrees never to directly or indirectly commence, voluntarily aid in any way, prosecute, assign, transfer, or cause to be commenced any claim, action, cause of action, or other proceeding to pursue or exercise the Inspection Rights. The foregoing waiver shall not affect any rights of a director, in his or her capacity as such, under Section 220. The foregoing waiver shall not apply to any contractual inspection rights under any written agreement Optionee may have with the Company.

(c) **Consent to Electronic Delivery.** The Optionee acknowledges that the Optionee has read Section 13(e) of this Agreement and consents to the electronic delivery of the Plan documents and, if permitted by the Company, the delivery of the Notice and Exercise Notice, as described in Section 13(e), and, if applicable, any information described in Rule 701(e)(2), (3), (4), and (5) of the Securities Act, account statements, or other communications or information. The Optionee acknowledges that he or she may receive from the Company a paper copy of any documents delivered electronically at no cost to the Optionee by contacting the Company by telephone or in writing. The Optionee further acknowledges that the Optionee will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, the Optionee understands that the Optionee must provide the Company or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. The Optionee may revoke his or her consent to the electronic delivery of documents described above or may change the electronic mail address to which such documents are to be delivered (if Optionee has provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, the Optionee understands that while he or she is not required to consent to electronic delivery, his or her execution of this Agreement confirms his or her consent to the maximum extent permitted by law.

(f) **Data Privacy.** Optionee hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of Optionee’s personal data as described in this Agreement and any other Option grant materials by and among, as applicable, the Company any Parent or Subsidiary of for the exclusive purpose of implementing, administering and managing Optionee’s participation in the Plan. Optionee understands that the Company may hold certain personal information about Optionee, including, but not limited to, Optionee’s name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any shares of stock or directorships held in the Company, details of all Options or any other entitlement to shares of stock awarded.
canceled, exercised, vested, unvested or outstanding in Optionee’s favor (“Data”), for the exclusive purpose of implementing, administering and managing the Plan. Optionee understands that Data will be transferred to third parties in connection with the implementation, administration and management of the Plan. Optionee understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipient’s country (e.g., the United States) may have different data privacy laws and protections than Optionee’s country. Optionee understands that if he or she resides outside the United States, he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. Optionee authorizes the Company and any other possible recipients which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purposes of implementing, administering and managing Optionee’s participation in the Plan. Optionee understands that Data will be held only as long as is necessary to implement, administer and manage Optionee’s participation in the Plan. Optionee understands that if he or she resides outside the United States, he or she may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her local human resources representative. Further, Optionee understands that he or she is providing the consents herein on a purely voluntary basis. If Optionee does not consent, or if Optionee later seeks to revoke his or her consent, his or her employment status or service and career with the Company will not be adversely affected; the only adverse consequence of refusing or withdrawing Optionee’s consent is that Company would not be able to grant Optionee options or other equity awards or administer or maintain such awards. Therefore, Optionee understands that refusing or withdrawing his or her consent may affect Optionee’s ability to participate in the Plan. For more information on the consequences of Optionee’s refusal to consent or withdrawal of consent, Optionee understands that he or she may contact his or her local human resources representative.

(g) Applicable Law. This Option Agreement shall be governed by the laws of the State of California.

(h) Vesting Schedule. Optionee agrees and acknowledges that the vesting and/or exercise schedule of the Option may change prospectively in the event that Optionee’s Continuous Service Status changes between full and part time status in accordance with Company policies relating to work schedules and vesting of awards.

(i) Retention. Optionee agrees and acknowledges that Optionee’s rights to any Shares underlying the Option will be earned only as Optionee remains in Continuous Service Status with the Company, that the grant of the Option is not intended to be consideration for services rendered to the Company, and that nothing herein confers upon Optionee any right to continue his or her service relationship with the Company for any period of time, nor does it interfere in any way with Optionee’s right or the Company’s right to terminate that relationship at any time, for any reason, with or without cause.

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This Agreement (“Agreement”) is made as of , by and between FitBit, Inc., a Delaware corporation (the “Company”), and (“Purchaser”). To the extent any capitalized terms used in this Agreement are not defined, they shall have the meaning ascribed to them in the Amended and Restated 2007 Stock Plan.

1. Exercise of Option. Subject to the terms and conditions hereof, Purchaser hereby elects to exercise his or her option to purchase shares of the Common Stock (the “Shares”) of the Company under and pursuant to the Company’s Amended and Restated 2007 Stock Plan (the “Plan”) and the Stock Option Agreement granted (the “Option Agreement”). The purchase price for the Shares shall be $ per Share for a total purchase price of $ . The term “Shares” refers to the purchased Shares and all securities received in replacement of the Shares or as stock dividends or splits, all securities received in replacement of the Shares in a recapitalization, merger, reorganization, exchange or the like, and all new, substituted or additional securities or other properties to which Purchaser is entitled by reason of Purchaser’s ownership of the Shares.

2. Time and Place of Exercise. The purchase and sale of the Shares under this Agreement shall occur at the principal office of the Company simultaneously with the execution and delivery of this Agreement in accordance with the provisions of Section 3(b) of the Option Agreement. On such date, the Company will deliver to Purchaser a certificate representing the Shares to be purchased by Purchaser (which shall be issued in Purchaser’s name) against payment of the exercise price therefor by Purchaser by any method listed in Section 4 of the Option Agreement.

3. Limitations on Transfer. In addition to any other limitation on transfer created by applicable securities laws, Purchaser shall not assign, encumber or dispose of any interest in the Shares except in compliance with the provisions below and applicable securities laws.

   (a) Right of First Refusal. Before any Shares held by Purchaser or any transferee of Purchaser (either being sometimes referred to herein as the “Holder”) may be sold or otherwise transferred (including transfer by gift or operation of law), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares on the terms and conditions set forth in this Section 3(a) (the “Right of First Refusal”).

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(i) **Notice of Proposed Transfer.** The Holder of the Shares shall deliver to the Company a written notice (the “Notice”) stating: (i) the Holder’s bona fide intention to sell or otherwise transfer such Shares; (ii) the name of each proposed purchaser or other transferee (“Proposed Transferee”); (iii) the number of Shares to be transferred to each Proposed Transferee; and (iv) the terms and conditions of each proposed sale or transfer. The Holder shall offer the Shares at the same price (the “Offered Price”) and upon the same terms (or terms as similar as reasonably possible) to the Company or its assignee(s).

(ii) **Exercise of Right of First Refusal.** At any time within thirty (30) days after receipt of the Notice, the Company and/or its assignee(s) may, by giving written notice to the Holder, elect to purchase all, but not less than all, of the Shares proposed to be transferred to any one or more of the Proposed Transferees, at the purchase price determined in accordance with subsection (iii) below.

(iii) **Purchase Price.** The purchase price (“Purchase Price”) for the Shares purchased by the Company or its assignee(s) under this Section 3(a) shall be the Offered Price. If the Offered Price includes consideration other than cash, the cash equivalent value of the non-cash consideration shall be determined by the Board of Directors of the Company in good faith.

(iv) **Payment.** Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness, or by any combination thereof within 30 days after receipt of the Notice or in the manner and at the times set forth in the Notice.

(v) **Holder’s Right to Transfer.** If all of the Shares proposed in the Notice to be transferred to a given Proposed Transferee are not purchased by the Company and/or its assignee(s) as provided in this Section 3(a), then the Holder may sell or otherwise transfer such Shares to that Proposed Transferee at the Offered Price or at a higher price, provided that such sale or other transfer is consummated within 60 days after the date of the Notice and provided further that any such sale or other transfer is effected in accordance with any applicable securities laws and the Proposed Transferee agrees in writing that the provisions of this Section 3 shall continue to apply to the Shares in the hands of such Proposed Transferee. If the Shares described in the Notice are not transferred to the Proposed Transferee within such period, or if the Holder proposes to change the price or other terms to make them more favorable to the Proposed Transferee, a new Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal before any Shares held by the Holder may be sold or otherwise transferred.

(vi) **Exception for Certain Family Transfers.** Anything to the contrary contained in this Section 3(a) notwithstanding, the transfer of any or all of the Shares during Purchaser’s lifetime or on Purchaser’s death by will or intestacy to Purchaser’s Immediate Family or a trust for the benefit of Purchaser’s Immediate Family shall be exempt from the provisions of this Section 3(a). “Immediate Family” as used herein shall mean spouse, lineal descendant or antecedent, father, mother, brother or sister. In such case, the transferee or other recipient shall receive and hold the Shares so transferred subject to the provisions of this Section, and there shall be no further transfer of such Shares except in accordance with the terms of this Section 3.
(b) **Involuntary Transfer**

(i) **Company’s Right to Purchase upon Involuntary Transfer**. In the event, at any time after the date of this Agreement, of any transfer by operation of law or other involuntary transfer (including death or divorce, but excluding a transfer to Immediate Family as set forth in Section 3(a)(vi) above) of all or a portion of the Shares by the record holder thereof, the Company shall have an option to purchase all of the Shares transferred at the greater of the purchase price paid by Purchaser pursuant to this Agreement or the Fair Market Value of the Shares on the date of transfer. Upon such a transfer, the person acquiring the Shares shall promptly notify the Secretary of the Company of such transfer. The right to purchase such Shares shall be provided to the Company for a period of thirty (30) days following receipt by the Company of written notice by the person acquiring the Shares.

(ii) **Price for Involuntary Transfer**. With respect to any stock to be transferred pursuant to Section 3(b)(i), the price per Share shall be a price set by the Board of Directors of the Company that will reflect the current value of the stock in terms of present earnings and future prospects of the Company. The Company shall notify Purchaser or his or her executor of the price so determined within thirty (30) days after receipt by it of written notice of the transfer or proposed transfer of Shares. However, if the Purchaser does not agree with the valuation as determined by the Board of Directors of the Company, the Purchaser shall be entitled to have the valuation determined by an independent appraiser to be mutually agreed upon by the Company and the Purchaser and whose fees shall be borne equally by the Company and the Purchaser.

(c) **Assignment**. The right of the Company to purchase any part of the Shares may be assigned in whole or in part to any shareholder or shareholders of the Company or other persons or organizations.

(e) **Restrictions Binding on Transferees**. All transferees of Shares or any interest therein will receive and hold such Shares or interest subject to the provisions of this Agreement. Any sale or transfer of the Company’s Shares shall be void unless the provisions of this Agreement are satisfied.

(f) **Termination of Rights**. The right of first refusal granted the Company by Section 3(a) above and the option to repurchase the Shares in the event of an involuntary transfer granted the Company by Section 3(b) above shall terminate upon the first sale of Common Stock of the Company to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”). Upon termination of the right of first refusal described in Section 3(a) above, a new certificate or certificates representing the Shares not repurchased shall be issued, on request, without the legend referred to in Section 5(a)(ii) herein and delivered to Purchaser.
4. Investment and Taxation Representations. In connection with the purchase of the Shares, Purchaser represents to the Company the following:

(a) Purchaser is aware of the Company’s business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares. Purchaser is purchasing these securities for investment for his or her own account only and not with a view to, or for resale in connection with, any “distribution” thereof within the meaning of the Securities Act or under any applicable provision of state law. Purchaser does not have any present intention to transfer the Shares to any person or entity.

(b) Purchaser understands that the Shares have not been registered under the Securities Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Purchaser’s investment intent as expressed herein.

(c) Purchaser further acknowledges and understands that the securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Purchaser further acknowledges and understands that the Company is under no obligation to register the securities. Purchaser understands that the certificate(s) evidencing the securities will be imprinted with a legend which prohibits the transfer of the securities unless they are registered or such registration is not required in the opinion of counsel for the Company.

(d) Purchaser is familiar with the provisions of Rules 144 and 701, each promulgated under the Securities Act, which, in substance, permit limited public resale of “restricted securities” acquired, directly or indirectly, from the issuer of the securities (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions. Purchaser understands that the Company provides no assurances as to whether he or she will be able to resell any or all of the Shares pursuant to Rule 144 or Rule 701. Notwithstanding this paragraph (d), Purchaser acknowledges and agrees to the restrictions set forth in paragraph (e) below.

(e) Purchaser further understands that in the event all of the applicable requirements of Rule 144 or 701 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rule 144 or 701 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk.

(f) Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser’s purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.
5. **Restrictive Legends and Stop-Transfer Orders**

   (a) **Legends**. The certificate or certificates representing the Shares shall bear the following legends (as well as any legends required by applicable state and federal corporate and securities laws):

   (i) THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR UNDER ANY APPLICABLE STATE SECURITIES LAWS, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL FOR THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933 OR UNDER APPLICABLE STATE LAW.

   (ii) THE SHARES REPRESENTED BY THIS CERTIFICATE 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.

   (b) **Stop-Transfer Notices**. Purchaser agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate “stop transfer” instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

   (c) **Refusal to Transfer**. The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

6. **No Employment Rights**. Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a parent or subsidiary of the Company, to terminate Purchaser’s employment or consulting relationship, for any reason, with or without cause.
7. Lock-Up Agreement. In connection with the initial public offering of the Company’s securities and upon request of the Company or the underwriters managing any underwritten offering of the Company’s securities, Purchaser agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however or whenever acquired (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed 180 days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the public offering.

8. Miscellaneous.
   (a) Governing Law. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.
   (b) Entire Agreement; Enforcement of Rights. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.
   (c) Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.
   (d) Construction. This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.
   (e) Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient when delivered personally or sent by telegram or fax or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, and addressed to the party to be notified at such party’s address as set forth below or as subsequently modified by written notice.
   (f) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.
   (g) Successors and Assigns. The rights and benefits of this Agreement shall inure to the benefit of, and be enforceable by the Company’s successors and assigns. The rights and obligations of Purchaser under this Agreement may only be assigned with the prior written consent of the Company.

[Signature Page Follows]

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The parties have executed this Exercise Notice and Restricted Stock Purchase Agreement as of the date first set forth above.

COMPANY:
FITBIT, INC.

By: __________________________________________
Name: _______________________________________
Title: _______________________________________

PURCHASER:

(Signature)
(Print Name)
Address: ______________________________________

I, ______________________, spouse of ______________________, have read and hereby approve the foregoing Agreement. In consideration of the Company’s granting my spouse the right to purchase the Shares as set forth in the Agreement, I hereby agree to be irrevocably bound by the Agreement and further agree that any community property or other such interest shall hereby by similarly bound by the Agreement. I hereby appoint my spouse as my attorney-in-fact with respect to any amendment or exercise of any rights under the Agreement.

Spouse of ______________________
FitBit, Inc. (the “Company”) hereby acknowledges receipt of (check as applicable):

- A check in the amount of $__________
- The cancellation of indebtedness in the amount of $__________
- Other approved method of payment.

Dated: ______________________

FitBit, Inc.

By: _______________________

Name: _______________________
   (print)

Title: _______________________
FITBIT, INC.

AMENDED AND RESTATED 2007 STOCK PLAN

STOCK OPTION AGREEMENT

1. **Grant of Option.** FitBit, Inc., a Delaware corporation (the “Company”), hereby grants to ____________________________ (“Optionee”), an option (the “Option”) to purchase the total number of shares of Common Stock (the “Shares”) set forth in the Notice of Stock Option Grant relating to this Option, which has been provided to Optionee (the “Notice”), at the exercise price per Share set forth in the Notice (the “Exercise Price”) subject to the terms, definitions and provisions of the FitBit, Inc. Amended and Restated 2007 Stock Plan (the “Plan”) adopted by the Company, which is incorporated in this Agreement by reference. Unless otherwise defined in this Agreement, the terms used in this Agreement shall have the meanings defined in the Plan.

2. **Designation of Option.** This Option is intended to be an Incentive Stock Option as defined in Section 422 of the Code only to the extent so designated in the Notice, and to the extent it is not so designated or to the extent the Option does not qualify as an Incentive Stock Option, it is intended to be a Nonstatutory Stock Option.

Notwithstanding the above, if designated as an Incentive Stock Option, in the event that the Shares subject to this Option (and all other Incentive Stock Options granted to Optionee by the Company or any Parent or Subsidiary, including under other plans of the Company) that first become exercisable in any calendar year have an aggregate fair market value (determined for each Share as of the date of grant of the option covering such Share) in excess of $100,000, the Shares in excess of $100,000 shall be treated as subject to a Nonstatutory Stock Option, in accordance with Section 5(c) of the Plan.

3. **Exercise of Option.** This Option shall be exercisable during its term in accordance with the Vesting Schedule and with the provisions of Section 10 of the Plan as follows:

   (a) **Right to Exercise.**

      (i) This Option may not be exercised for a fraction of a share.

      (ii) In the event of Optionee’s death, disability or other termination of employment, the exercisability of the Option is governed by Section 5 below, subject to the limitations contained in this Section 3.

      (iii) In no event may this Option be exercised after the Expiration Date of the Option as set forth in the Notice.
(b) Method of Exercise.

(i) This Option shall be exercisable by execution and delivery of the Exercise Notice and Restricted Stock Purchase Agreement attached hereto as Exhibit A (the “Exercise Agreement”) or of any other form of written notice approved for such purpose by the Company which shall state Optionee’s election to exercise the Option, the number of Shares in respect of which the Option is being exercised, and such other representations and agreements as to the holder’s investment intent with respect to such Shares as may be required by the Company pursuant to the provisions of the Plan. Such written notice shall be signed by Optionee and shall be delivered to the Company by such means as are determined by the Plan Administrator in its discretion to constitute adequate delivery. The written notice shall be accompanied by payment of the Exercise Price. This Option shall be deemed to be exercised upon receipt by the Company of such written notice accompanied by the Exercise Price.

(ii) As a condition to the exercise of this Option and as further set forth in Section 12 of the Plan, Optionee agrees to make adequate provision for federal, state or other tax withholding obligations, if any, which arise upon the exercise of the Option whether by withholding, direct payment to the Company, or otherwise. Optionee also agrees to make adequate and timely provision for federal, state, or other tax withholding obligations, if any, which arise from the vesting of the Option or the disposition of shares.

(iii) The Company is not obligated, and will have no liability for failure, to issue or deliver any Shares upon exercise of the Option unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. This Option may not be exercised until such time as the Plan has been approved by the stockholders of the Company, or if the issuance of such Shares upon such exercise or the method of payment of consideration for such shares would constitute a violation of any applicable federal or state securities or other law or regulation, including any rule under Part 221 of Title 12 of the Code of Federal Regulations as promulgated by the Federal Reserve Board. As a condition to the exercise of this Option, the Company may require Optionee to make any representation and warranty to the Company as may be required by the Applicable Laws.

(c) Acceleration of Vesting. Notwithstanding the Vesting Schedule set out in the Notice or the other provisions of this Agreement, in the event that the Optionee is “involuntarily separated” from the Company (or a successor to the Company pursuant to a Change in Control (as defined in the Plan) within twelve (12) months following the closing of a Change in Control, then the Vesting Schedule shall be amended to provide that one-half of any then remaining unvested Shares shall, upon the date of such involuntary separation, immediately vest and become exercisable. For these purposes, you shall be deemed to have been “involuntarily separated” if (i) your employment is terminated by the Company (or a successor) for a reason other than “Cause” (as defined below), death or permanent disability, or (ii) you resign within ninety (90) days following any of the following events, provided that you provided the Company with thirty (30) days written notice of one of the following events and the Company failed to remedy the event within thirty (30) days after receiving such notice: (A) any material diminution or material adverse change in your duties or responsibilities (other than in
connection with your unavailability by reason of disability, (B) a reduction of more than 10% in any one-year period by the Company in your base salary (other than on account of a reduction applicable to all executive employees), or (C) the relocation of your principal work location more than fifty (50) miles from San Mateo, California, except for required travel substantially consistent with your business obligations. For the avoidance of doubt, a mere change in title without a material adverse change in duties or responsibilities shall not constitute grounds for an involuntary separation. As used here, “Cause” shall mean the occurrence of any of the following events, as determined in the good faith judgment of the Board of Directors of the Company: (A) your refusal to follow the lawful directions of the Board within five (5) days of the giving of written notice thereof to you; (B) your gross negligence, willful misconduct, embezzlement or misappropriation of corporation funds or other acts of theft, fraud, self-dealing, dishonesty or breach of fiduciary duty with respect to the Company that, if curable, is not cured within ten (10) days of the giving of written notice thereof to you; (C) your indictment for, conviction of, or pleading of guilty or nolo contendere to, a felony, any act or omission constituting, fraud, dishonesty or disloyalty or, any act or omission constituting professional misconduct, in all cases with respect to the Company; (D) your significant violation of any statutory or common law duty of loyalty to the Company, or any violation of any material law, regulation or ordinance applicable to the Company which has an adverse effect on the Company; (E) the breach, non-performance or non-observance, by you, of any material term of any agreement to which you and the Company are parties, if such breach, non-performance or non-observance shall continue beyond a period of ten (10) days immediately after written notice thereof to you; (F) an unauthorized use or disclosure by you of the Company’s confidential information or trade secrets, which use or disclosure causes material harm to the Company; or (G) your failure to cooperate in good faith with a governmental or internal investigation of the Company or its directors, officers or employees, if the Company has requested your cooperation.

4. **Method of Payment.** Payment of the Exercise Price shall be by any of the following, or a combination of the following, at the election of Optionee:

   (a) cash or check;

   (b) cancellation of indebtedness;

   (c) prior to the date, if any, upon which the Common Stock becomes a Listed Security, by surrender of other shares of Common Stock of the Company that have an aggregate Fair Market Value on the date of surrender equal to the Exercise Price of the Shares as to which the Option is being exercised. In the case of shares acquired directly or indirectly from the Company, such shares must have been owned by Optionee for more than six (6) months on the date of surrender (or such other period of time as is necessary to avoid the Company’s incurring adverse accounting charges);

   (d) following the date, if any, upon which the Common Stock is a Listed Security, and if the Company is at such time permitting “same day sale” cashless brokered exercises and to the extent permitted by Applicable Laws, delivery of a properly executed exercise notice together with irrevocable instructions to a broker participating in such cashless brokered exercise program to deliver promptly to the Company the amount required to pay the exercise price (and applicable withholding taxes);
provided that, the Administrator may, in its sole discretion, refuse to accept a particular form of consideration at the time of exercise.

5. **Termination of Relationship.** Following the date of termination of Optionee’s Continuous Service Status for any reason (the “Termination Date”), Optionee may exercise the Option only as set forth in this Section 5. To the extent that Optionee is not entitled to exercise this Option as of the Termination Date, or if Optionee does not exercise this Option within the applicable period set forth below, the Option shall terminate in its entirety. In no event, may any Option be exercised after the Expiration Date of the Option as set forth below.

(a) **Termination.** In the event of termination of Optionee’s Continuous Service Status other than as a result of Optionee’s Disability or death or for Cause (as defined in the Plan), Optionee may, to the extent Optionee is vested in the Option Shares at the date of such termination (the “Termination Date”), exercise this Option during the three (3) month period immediately following the Termination Date.

(b) **Other Terminations.** In connection with any termination other than a termination covered by Section 5(a), Optionee may exercise the Option only as described below:

(i) **Termination upon Disability of Optionee.** In the event of termination of Optionee’s Continuous Service Status as a result of Optionee’s Disability, Optionee may, but only within six months from the Termination Date, exercise this Option to the extent Optionee was vested in the Option Shares as of such Termination Date. For purposes of this Agreement, “Disability” means the Optionee’s inability, in the opinion of a qualified physician acceptable to the Company, to perform the major duties of Optionee’s position because of his or her sickness or injury. Any exercise of this Option beyond (i) three (3) months after Optionee’s termination of Continuous Service Status, when such termination is for any reason other than Optionee’s death or disability, within the meaning of Section 22(e)(3) of the Code; or (ii) twelve (12) months after Optionee’s termination of Continuous Service Status, when such termination is for Optionee’s disability, within the meaning of Section 22(e)(3) of the Code, is deemed to be a Nonstatutory Stock Option.

(ii) **Death of Optionee.** In the event of the death of Optionee (a) during the term of this Option and while an Employee or Consultant of the Company and having been in Continuous Service Status since the date of grant of the Option, or (b) within thirty (30) days after Optionee’s Termination Date, the Option may be exercised at any time within twelve months following the date of death by Optionee’s estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent Optionee was vested in the Option as of the Termination Date.

(iii) **Termination for Cause.** In the event Optionee’s Continuous Service Status is terminated for Cause, the Option shall terminate immediately upon such termination for Cause as set forth in Section 10(b)(iv) of the Plan. In the event Optionee’s employment or consulting relationship with the Company is suspended pending investigation of whether such relationship shall be terminated for Cause, all Optionee’s rights under the Option, including the right to exercise the Option, shall be suspended during the investigation period, also as set forth in Section 10(b)(iv) of the Plan.
6. **Non-Transferability of Option.** This Option may not be transferred in any manner other than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee only by him or her. The designation of a beneficiary by Optionee will not constitute a transfer. The terms of this Option shall be binding upon the executors, administrators, heirs, successors and assigns of Optionee.

7. **Tax Consequences.** Below is a brief summary as of the date of this Option of certain of the United States federal tax consequences of exercise of this Option and disposition of the Shares under the laws in effect as of the Date of Grant. THIS SUMMARY IS INCOMPLETE, AND THE TAX LAWS AND REGULATIONS ARE SUBJECT TO CHANGE. OPTIONEE SHOULD CONSULT A TAX ADVISER BEFORE EXERCISING THIS OPTION OR DISPOSING OF THE SHARES.

   (a) **Incentive Stock Option**

   (i) **Tax Treatment upon Exercise and Sale of Shares.** If this Option qualifies as an Incentive Stock Option, there will be no regular federal income tax liability upon the exercise of the Option, although the excess, if any, of the fair market value of the Shares on the date of exercise over the Exercise Price will be treated as an adjustment to the alternative minimum tax for federal tax purposes and may subject Optionee to the alternative minimum tax in the year of exercise. If Shares issued upon exercise of an Incentive Stock Option are held for at least one year after exercise and are disposed of at least two years after the Option grant date, any gain realized on disposition of the Shares will also be treated as long-term capital gain for federal income tax purposes. If Shares issued upon exercise of an Incentive Stock Option are disposed of within such one-year period or within two years after the Option grant date, any gain realized on such disposition will be treated as compensation income (taxable at ordinary income rates) to the extent of the difference between the Exercise Price and the lesser of (i) the fair market value of the Shares on the date of exercise, or (ii) the sale price of the Shares.

   (ii) **Notice of Disqualifying Dispositions.** With respect to any Shares issued upon exercise of an Incentive Stock Option, if Optionee sells or otherwise disposes of such Shares on or before the later of (i) the date two years after the Option grant date, or (ii) the date one year after the date of exercise, Optionee shall immediately notify the Company in writing of such disposition. Optionee acknowledges and agrees that he or she may be subject to income tax withholding by the Company on the compensation income recognized by Optionee from the early disposition by payment in cash or out of the current earnings paid to Optionee.

   (b) **Nonstatutory Stock Option.** If this Option does not qualify as an Incentive Stock Option, there may be a regular federal (and state) income tax liability upon the exercise of the Option. Optionee will be treated as having received compensation income (taxable at ordinary income tax rates) equal to the excess, if any, of the fair market value of the Shares on the date of exercise over the Exercise Price. If Optionee is an Employee, the Company will be required to withhold from Optionee’s compensation or collect from Optionee and pay to the applicable taxing authorities an amount equal to a percentage of this compensation income at the time of exercise. If Shares issued upon exercise of a Nonstatutory Stock Option are held for at least one year, any gain realized on disposition of the Shares will be treated as long-term capital gain for federal income tax purposes.
8. **Lock-Up Agreement.** In connection with the initial public offering of the Company’s securities and upon request of the Company or the underwriters managing any underwritten offering of the Company’s securities, Optionee hereby agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however and whenever acquired (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed 180 days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the public offering.

9. **Effect of Change in Control.** In the event of a Change in Control, the surviving, continuing, successor, or purchasing entity or parent thereof, as the case may be (the “**Acquiror**”), may, without the consent of the Optionee, assume or continue in full force and effect the Company’s rights and obligations under the Option or any portion thereof or substitute for the Option any portion thereof or substitute for the Option or any portion thereof a substantially equivalent option for the Acquiror’s stock. For purposes of this Section, the Option shall be deemed assumed if, following the Change in Control, the Option confers the right to receive, subject to the terms and conditions of the Plan and this Agreement, for each Share subject to the Option immediately prior to the Change in Control, the consideration (whether stock, cash, other securities or property or a combination thereof) to which a holder of a Share on the effective date of the Change in Control was entitled; provided, however, that if such consideration is not solely common stock of the Acquiror, the Board may, with the consent of the Acquiror, provide for the consideration to be received upon the exercise of the Option, for each Share subject to the Option, to consist solely of common stock of the Acquiror equal in Fair Market Value to the per share consideration received by holders of Shares pursuant to the Change in Control. The Option shall terminate without consideration and cease to be outstanding effective as of the time of consummation of the Change in Control to the extent that the Option is neither assumed or continued by the Acquiror in connection with the Change in Control nor exercised as of the date of the Change in Control. Notwithstanding the foregoing, shares acquired upon exercise of the Option prior to the Change in Control and any consideration received pursuant to the Change in Control with respect to such shares shall continue to be subject to all applicable provisions of this Agreement except as otherwise provided herein.

10. **Adjustments for Changes in Capital Structure.** Subject to any required action by the stockholders of the Company, in the event of any change in the Shares effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Shares (excepting normal cash dividends) that has a material effect on the Fair Market Value of Shares, proportionate adjustments shall be made in the number of shares and the Exercise Price subject to the Option. For purposes of the
foregoing, conversion of any convertible securities of the Company shall not be treated as “effected without receipt of consideration by the Company.” Any fractional share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number and the Exercise Price shall be rounded up to the nearest whole cent. In no event may the Exercise Price be decreased to an amount less than the par value, if any, of the stock subject to the Option. Such adjustments shall be determined by the Board, and its determination shall be final, binding and conclusive.

11. Rights as a Stockholder, Director, Employee or Consultant. The Optionee shall have no rights as a stockholder with respect to any Shares covered by the Option until the date of the issuance of the Shares for which the Option has been exercised (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date the shares are issued, except as provided in Section 10. If the Optionee is an Employee, the Optionee understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between the Company and the Optionee, the Optionee’s employment is “at will” and is for no specified term. Nothing in this Agreement shall confer upon the Optionee any right to continue in the service of a Company or interfere in any way with any right of the Company to terminate the Optionee’s service as a Director, an Employee or Consultant, as the case may be, at any time.

12. Effect of Agreement. Optionee acknowledges receipt of a copy of the Plan and represents that he or she is familiar with the terms and provisions thereof (and has had an opportunity to consult counsel regarding the Option terms), and hereby accepts this Option and agrees to be bound by its contractual terms as set forth herein and in the Plan. Optionee hereby agrees to accept as binding, conclusive and final all decisions and interpretations of the Plan Administrator regarding any questions relating to the Option. In the event of a conflict between the terms and provisions of the Plan and the terms and provisions of the Notice and this Agreement, the Plan terms and provisions shall prevail. The Option, including the Plan, constitutes the entire agreement between Optionee and the Company on the subject matter hereof and supersedes all proposals, written or oral, and all other communications between the parties relating to such subject matter.

   (a) Further Instruments. The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.
   (b) Binding Effect. Subject to the restrictions on transfer set forth herein, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.
   (c) Termination or Amendment. The Board may terminate or amend the Plan or the Option at any time; provided, however, that except as provided in Section 9 in connection with a Change in Control, no such termination or amendment may adversely affect the Option or any unexercised portion hereof without the consent of the Optionee unless such
termination or amendment is necessary to comply with any applicable law or government regulation. No amendment or addition to this Agreement shall be effective unless in writing. Except as provided by the next sentence, no amendment, suspension or termination of the Plan may adversely affect any then outstanding Option without the consent of the Optionee. Notwithstanding any other provision of the Plan or this Agreement to the contrary, the Board may, in its sole and absolute discretion and without the consent of any participant, amend the Plan or any Agreement, to take effect retroactively or otherwise, as it deems necessary or advisable for the purpose of conforming the Plan or such Agreement to any present or future law, regulation or rule applicable to the Plan or Agreement, including, but not limited to, Section 409A of the Code.

(d) Delivery of Documents and Notices. Any document relating to participation in the Plan, or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery, electronic delivery at the e-mail address, if any, provided for the Optionee by the Company, or, upon deposit in the U.S. Post Office or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service with postage and fees prepaid, addressed to the other party at the address of such party set forth in the Notice or at such other address as such party may designate in writing from time to time to the other party.

(i) Description of Electronic Delivery. The Plan documents, which may include but do not necessarily include: the Plan, the Notice, this Agreement, and any reports of the Company provided generally to the Company’s shareholders, may be delivered to the Optionee electronically. In addition, if permitted by the Company, the Optionee may deliver electronically the Notice and Exercise Notice called for by Section 3(b) to the Company or to such third party involved in administering the Plan as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company.

(ii) Inspection Rights. Optionee acknowledges and understands that, but for the waiver made herein, Optionee would be entitled, upon written demand under oath stating the purpose thereof, to inspect for any proper purpose, and to make copies and extracts from, the Company’s stock ledger, a list of its stockholders, and its other books and records, and the books and records of subsidiaries of the Company, if any, under the circumstances and in the manner provided in Section 220 of the General Corporation Law of Delaware (any and all such rights, and any and all such other rights of Optionee as may be provided for in Section 220, the “Inspection Rights”). In light of the foregoing, until the first sale of common stock of the Company to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act, Optionee hereby unconditionally and irrevocably waives the Inspection Rights, whether such Inspection Rights would be exercised or pursued directly or indirectly pursuant to Section 220 or otherwise, and covenants and agrees never to directly or indirectly commence, voluntarily aid in any way, prosecute, assign, transfer, or cause to be commenced any claim, action, cause of action, or other -8-
proceeding to pursue or exercise the Inspection Rights. The foregoing waiver shall not affect any rights of a director, in his or her capacity as such, under Section 220. The foregoing waiver shall not apply to any contractual inspection rights under any written agreement Optionee may have with the Company.

(e) Consent to Electronic Delivery. The Optionee acknowledges that the Optionee has read Section 13(e) of this Agreement and consents to the electronic delivery of the Plan documents and, if permitted by the Company, the delivery of the Notice and Exercise Notice, as described in Section 13(e), and, if applicable, any information described in Rule 701(c)(2), (3), (4), and (5) of the Securities Act, account statements, or other communications or information. The Optionee acknowledges that he or she may receive from the Company a paper copy of any documents delivered electronically at no cost to the Optionee by contacting the Company by telephone or in writing. The Optionee further acknowledges that the Optionee will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, the Optionee understands that the Optionee must provide the Company or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. The Optionee may revoke his or her consent to the electronic delivery of documents described above or may change the electronic mail address to which such documents are to be delivered (if Optionee has provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, the Optionee understands that while he or she is not required to consent to electronic delivery, his or her execution of this Agreement confirms his or her consent to the maximum extent permitted by law.

(f) Data Privacy. Optionee hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of Optionee’s personal data as described in this Agreement and any other Option grant materials by and among, as applicable, the Company any Parent or Subsidiary of for the exclusive purpose of implementing, administering and managing Optionee’s participation in the Plan. Optionee understands that the Company may hold certain personal information about Optionee, including, but not limited to, Optionee’s name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any shares of stock or directorships held in the Company, details of all Options or any other entitlement to shares of stock awarded, canceled, exercised, vested, unvested or outstanding in Optionee’s favor (“Data”), for the exclusive purpose of implementing, administering and managing the Plan. Optionee understands that Data will be transferred to third parties in connection with the implementation, administration and management of the Plan. Optionee understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipient’s country (e.g., the United States) may have different data privacy laws and protections than Optionee’s country. Optionee understands that if he or she resides outside the United States, he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. Optionee authorizes the Company and any other possible recipients which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purposes of implementing, administering and managing
Optionee’s participation in the Plan. Optionee understands that Data will be held only as long as is necessary to implement, administer and manage Optionee’s participation in the Plan. Optionee understands that if he or she resides outside the United States, he or she may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her local human resources representative. Further, Optionee understands that he or she is providing the consents herein on a purely voluntary basis. If Optionee does not consent, or if Optionee later seeks to revoke his or her consent, his or her employment status or service and career with the Company will not be adversely affected; the only adverse consequence of refusing or withdrawing Optionee’s consent is that Company would not be able to grant Optionee options or other equity awards or administer or maintain such awards. Therefore, Optionee understands that refusing or withdrawing his or her consent may affect Optionee’s ability to participate in the Plan. For more information on the consequences of Optionee’s refusal to consent or withdrawal of consent, Optionee understands that he or she may contact his or her local human resources representative.

(g) **Applicable Law.** This Option Agreement shall be governed by the laws of the State of California.

(h) **Vesting Schedule.** Optionee agrees and acknowledges that the vesting and/or exercise schedule of the Option may change prospectively in the event that Optionee’s Continuous Service Status changes between full and part time status in accordance with Company policies relating to work schedules and vesting of awards.

(i) **Retention.** Optionee agrees and acknowledges that Optionee’s rights to any Shares underlying the Option will be earned only as Optionee remains in Continuous Service Status with the Company, that the grant of the Option is not intended to be consideration for services rendered to the Company, and that nothing herein confers upon Optionee any right to continue his or her service relationship with the Company for any period of time, nor does it interfere in any way with Optionee’s right or the Company’s right to terminate that relationship at any time, for any reason, with or without cause.
EXHIBIT A
FITBIT, INC.

AMENDED AND RESTATED 2007 STOCK PLAN

EXERCISE NOTICE AND RESTRICTED STOCK PURCHASE AGREEMENT

This Agreement (“Agreement”) is made as of _______________, by and between FitBit, Inc., a Delaware corporation (the “Company”), and _______________ (“Purchaser”). To the extent any capitalized terms used in this Agreement are not defined, they shall have the meaning ascribed to them in the Amended and Restated 2007 Stock Plan.

1. Exercise of Option. Subject to the terms and conditions hereof, Purchaser hereby elects to exercise his or her option to purchase __________ shares of the Common Stock (the “Shares”) of the Company under and pursuant to the Company’s Amended and Restated 2007 Stock Plan (the “Plan”) and the Stock Option Agreement granted __________ (the “Option Agreement”). The purchase price for the Shares shall be $_________ per Share for a total purchase price of $_________. The term “Shares” refers to the purchased Shares and all securities received in replacement of the Shares or as stock dividends or splits, all securities received in replacement of the Shares in a recapitalization, merger, reorganization, exchange or the like, and all new, substituted or additional securities or other properties to which Purchaser is entitled by reason of Purchaser’s ownership of the Shares.

2. Time and Place of Exercise. The purchase and sale of the Shares under this Agreement shall occur at the principal office of the Company simultaneously with the execution and delivery of this Agreement in accordance with the provisions of Section 3(b) of the Option Agreement. On such date, the Company will deliver to Purchaser a certificate representing the Shares to be purchased by Purchaser (which shall be issued in Purchaser’s name) against payment of the exercise price therefor by Purchaser by any method listed in Section 4 of the Option Agreement.

3. Limitations on Transfer. In addition to any other limitation on transfer created by applicable securities laws, Purchaser shall not assign, encumber or dispose of any interest in the Shares except in compliance with the provisions below and applicable securities laws.

(a) Right of First Refusal. Before any Shares held by Purchaser or any transferee of Purchaser (either being sometimes referred to herein as the “Holder”) may be sold or otherwise transferred (including transfer by gift or operation of law), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares on the terms and conditions set forth in this Section 3(a) (the “Right of First Refusal”).

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(i) **Notice of Proposed Transfer.** The Holder of the Shares shall deliver to the Company a written notice (the “Notice”) stating: (i) the Holder’s bona fide intention to sell or otherwise transfer such Shares; (ii) the name of each proposed purchaser or other transferee (“Proposed Transferee”); (iii) the number of Shares to be transferred to each Proposed Transferee; and (iv) the terms and conditions of each proposed sale or transfer. The Holder shall offer the Shares at the same price (the “Offered Price”) and upon the same terms (or terms as similar as reasonably possible) to the Company or its assignee(s).

(ii) **Exercise of Right of First Refusal.** At any time within thirty (30) days after receipt of the Notice, the Company and/or its assignee(s) may, by giving written notice to the Holder, elect to purchase all, but not less than all, of the Shares proposed to be transferred to any one or more of the Proposed Transferees, at the purchase price determined in accordance with subsection (iii) below.

(iii) **Purchase Price.** The purchase price (“Purchase Price”) for the Shares purchased by the Company or its assignee(s) under this Section 3(a) shall be the Offered Price. If the Offered Price includes consideration other than cash, the cash equivalent value of the non-cash consideration shall be determined by the Board of Directors of the Company in good faith.

(iv) **Payment.** Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness, or by any combination thereof within 30 days after receipt of the Notice or in the manner and at the times set forth in the Notice.

(v) **Holder’s Right to Transfer.** If all of the Shares proposed in the Notice to be transferred to a given Proposed Transferee are not purchased by the Company and/or its assignee(s) as provided in this Section 3(a), then the Holder may sell or otherwise transfer such Shares to that Proposed Transferee at the Offered Price or at a higher price, provided that such sale or other transfer is consummated within 60 days after the date of the Notice and provided further that any such sale or other transfer is effected in accordance with any applicable securities laws and the Proposed Transferee agrees in writing that the provisions of this Section 3 shall continue to apply to the Shares in the hands of such Proposed Transferee. If the Shares described in the Notice are not transferred to the Proposed Transferee within such period, or if the Holder proposes to change the price or other terms to make them more favorable to the Proposed Transferee, a new Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal before any Shares held by the Holder may be sold or otherwise transferred.

(vi) **Exception for Certain Family Transfers.** Anything to the contrary contained in this Section 3(a) notwithstanding, the transfer of any or all of the Shares during Purchaser’s lifetime or on Purchaser’s death by will or intestacy to Purchaser’s Immediate Family or a trust for the benefit of Purchaser’s Immediate Family shall be exempt from the provisions of this Section 3(a). “Immediate Family” as used herein shall mean spouse,
(b) **Involuntary Transfer**

(i) **Company’s Right to Purchase upon Involuntary Transfer**. In the event, at any time after the date of this Agreement, of any transfer by operation of law or other involuntary transfer (including death or divorce, but excluding a transfer to Immediate Family as set forth in Section 3(a)(vi) above) of all or a portion of the Shares by the record holder thereof, the Company shall have an option to purchase all of the Shares transferred at the greater of the purchase price paid by Purchaser pursuant to this Agreement or the Fair Market Value of the Shares on the date of transfer. Upon such a transfer, the person acquiring the Shares shall promptly notify the Secretary of the Company of such transfer. The right to purchase such Shares shall be provided to the Company for a period of thirty (30) days following receipt by the Company of written notice by the person acquiring the Shares.

(ii) **Price for Involuntary Transfer**. With respect to any stock to be transferred pursuant to Section 3(b)(i), the price per Share shall be a price set by the Board of Directors of the Company that will reflect the current value of the stock in terms of present earnings and future prospects of the Company. The Company shall notify Purchaser or his or her executor of the price so determined within thirty (30) days after receipt by it of written notice of the transfer or proposed transfer of Shares. However, if the Purchaser does not agree with the valuation as determined by the Board of Directors of the Company, the Purchaser shall be entitled to have the valuation determined by an independent appraiser to be mutually agreed upon by the Company and the Purchaser and whose fees shall be borne equally by the Company and the Purchaser.

(c) **Assignment**. The right of the Company to purchase any part of the Shares may be assigned in whole or in part to any shareholder or shareholders of the Company or other persons or organizations.

(e) **Restrictions Binding on Transferees**. All transferees of Shares or any interest therein will receive and hold such Shares or interest subject to the provisions of this Agreement. Any sale or transfer of the Company’s Shares shall be void unless the provisions of this Agreement are satisfied.

(f) **Termination of Rights**. The right of first refusal granted the Company by Section 3(a) above and the option to repurchase the Shares in the event of an involuntary transfer granted the Company by Section 3(b) above shall terminate upon the first sale of Common Stock of the Company to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”). Upon termination of the right of first refusal described in Section 3(a) above, a new certificate or certificates representing the Shares not repurchased shall be issued, on request, without the legend referred to in Section 5(a)(ii) herein and delivered to Purchaser.
4. **Investment and Taxation Representations.** In connection with the purchase of the Shares, Purchaser represents to the Company the following:

(a) Purchaser is aware of the Company’s business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares. Purchaser is purchasing these securities for investment for his or her own account only and not with a view to, or for resale in connection with, any “distribution” thereof within the meaning of the Securities Act or under any applicable provision of state law. Purchaser does not have any present intention to transfer the Shares to any person or entity.

(b) Purchaser understands that the Shares have not been registered under the Securities Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Purchaser’s investment intent as expressed herein.

(c) Purchaser further acknowledges and understands that the securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Purchaser further acknowledges and understands that the Company is under no obligation to register the securities. Purchaser understands that the certificate(s) evidencing the securities will be imprinted with a legend which prohibits the transfer of the securities unless they are registered or such registration is not required in the opinion of counsel for the Company.

(d) Purchaser is familiar with the provisions of Rules 144 and 701, each promulgated under the Securities Act, which, in substance, permit limited public resale of “restricted securities” acquired, directly or indirectly, from the issuer of the securities (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions. Purchaser understands that the Company provides no assurances as to whether he or she will be able to resell any or all of the Shares pursuant to Rule 144 or Rule 701. Notwithstanding this paragraph (d), Purchaser acknowledges and agrees to the restrictions set forth in paragraph (e) below.

(e) Purchaser further understands that in the event all of the applicable requirements of Rule 144 or 701 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rule 144 or 701 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk.

(f) Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser’s purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.
5. **Restrictive Legends and Stop-Transfer Orders**.

   (a) **Legends**. The certificate or certificates representing the Shares shall bear the following legends (as well as any legends required by applicable state and federal corporate and securities laws):

   (i) THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR UNDER ANY APPLICABLE STATE SECURITIES LAWS, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL FOR THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933 OR UNDER APPLICABLE STATE LAW.

   (ii) THE SHARES REPRESENTED BY THIS CERTIFICATE 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.

   (b) **Stop-Transfer Notices**. Purchaser agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate “stop transfer” instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

   (c) **Refusal to Transfer**. The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

6. **No Employment Rights**. Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a parent or subsidiary of the Company, to terminate Purchaser’s employment or consulting relationship, for any reason, with or without cause.

7. **Lock-Up Agreement**. In connection with the initial public offering of the Company’s securities and upon request of the Company or the underwriters managing any underwritten offering of the Company’s securities, Purchaser agrees not to sell, make any short...
sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however or whenever acquired (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed 180 days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the public offering.

8. **Miscellaneous**

(a) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

(b) **Entire Agreement; Enforcement of Rights.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

(c) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(d) **Construction.** This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

(e) **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient when delivered personally or sent by telegram or fax or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, and addressed to the party to be notified at such party’s address as set forth below or as subsequently modified by written notice.

(f) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(g) **Successors and Assigns.** The rights and benefits of this Agreement shall inure to the benefit of, and be enforceable by the Company’s successors and assigns. The rights and obligations of Purchaser under this Agreement may only be assigned with the prior written consent of the Company.

[Signature Page Follows]

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The parties have executed this Exercise Notice and Restricted Stock Purchase Agreement as of the date first set forth above.

COMPANY:
FITBIT, INC.

By: __________________________________________
Name: ________________________________________
Title: _________________________________________

PURCHASER:

(Signature)
(Print Name)
Address: ______________________________________

I, ________________________, spouse of ________________________, have read and hereby approve the foregoing Agreement. In consideration of the Company’s granting my spouse the right to purchase the Shares as set forth in the Agreement, I hereby agree to be irrevocably bound by the Agreement and further agree that any community property or other such interest shall hereby by similarly bound by the Agreement. I hereby appoint my spouse as my attorney-in-fact with respect to any amendment or exercise of any rights under the Agreement.

Spouse of ________________________

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FitBit, Inc. (the “Company”) hereby acknowledges receipt of (check as applicable):

___ A check in the amount of $__________
___ The cancellation of indebtedness in the amount of $__________
___ Other approved method of payment.

Dated: __________

FitBit, Inc.

By: ______________________________

Name: ______________________________

(print)

Title: ______________________________
This Restricted Stock Purchase Agreement (the “Agreement”) is made and entered into as of _________ (the “Effective Date”) by and between FitBit, Inc., a Delaware corporation (the “Company”), and ________ (“Purchaser”). Capitalized terms not defined herein shall have the meanings ascribed to them in the Company’s Amended and Restated 2007 Stock Plan, as may be amended from time to time (the “Plan”).

1. PURCHASE OF SHARES.

1.1 Agreement to Purchase and Sell Shares. On the Effective Date and subject to the terms and conditions of this Agreement and the Plan, Purchaser hereby purchases from the Company, and the Company hereby sells to Purchaser, _______ shares of the Company’s Common Stock (the “Shares”), at the price of ________($______) per share (the “Purchase Price Per Share”) for a Total Purchase Price of ________($______) (the “Purchase Price”). As used in this Agreement, the term “Shares” includes the Shares purchased under this Agreement and all securities received (a) in replacement of the Shares, (b) as a result of stock dividends or stock splits with respect to the Shares, and (c) in replacement of the Shares in a merger, recapitalization, reorganization or similar corporate transaction.

1.2 Payment. Purchaser hereby delivers payment of the Purchase Price as follows (check and complete as appropriate):

☐ in cash (by check) in the amount of $______________, receipt of which is acknowledged by the Company.

☐ by cancellation of indebtedness of the Company owed to Purchaser in the amount of $______________.

☐ by the waiver hereby of compensation due or accrued for services rendered in the amount of $______________.

☐ by delivery of ________fully-paid, nonassessable and vested shares of the Common Stock of the Company owned by Purchaser free and clear of all liens, claims, encumbrances or security interests, valued at the current Fair Market Value of $__________ per share (a) for which the Company has received “full payment of the purchase price” within the meaning of SEC Rule 144, (if purchased by use of a promissory note, such note has been fully paid with respect to such vested shares), or (b) that were obtained by Purchaser in the open public market.

2. DELIVERIES.

2.1 Deliveries by the Purchaser. Purchaser hereby delivers to the Company at its principal executive offices: (a) this completed and signed Agreement, and (b) the Purchase Price, paid by delivery of the form of payment specified in Section 1.2.
2.2 Deliveries by the Company. Upon its receipt of the Purchase Price, payment or other provision for any applicable tax obligations, if any, and all the documents to be executed and delivered by Purchaser to the Company as provided herein, the Company will issue a duly executed stock certificate evidencing the Shares in the name of Purchaser with the appropriate legends affixed thereto, to be placed in escrow as provided in Section 6.2 to secure performance of Purchaser’s obligations under Section 5 until expiration or termination of the Company’s Refusal Right (as defined in Section 5).

3. REPRESENTATIONS AND WARRANTIES OF PURCHASER. Purchaser represents and warrants to the Company as follows.

3.1 Agrees to Terms of the Plan. Purchaser has received a copy of the Plan, has read and understands the terms of the Plan and this Agreement, and agrees to be bound by their terms and conditions.

3.2 Acknowledgment of Tax Risks. Purchaser acknowledges that there may be adverse tax consequences upon the purchase and the disposition of the Shares, and that Purchaser has been advised by the Company to consult a tax adviser prior to such purchase or disposition. Purchaser further acknowledges that Purchaser is not relying on the Company or its counsel for tax advice regarding Purchaser’s purchaser or disposition of the Shares or the tax consequences to Purchaser of this Agreement.

3.3 Shares Not Registered or Qualified. Purchaser understands and acknowledges that the Shares have not been registered with the SEC under the Securities Act, or with any securities regulatory agency administering any state securities laws, and that, notwithstanding any other provision of this Agreement to the contrary, the purchase of any Shares is expressly conditioned upon compliance with the Securities Act and all applicable state securities laws. Purchaser agrees to cooperate with the Company to ensure compliance with such laws.

3.4 No Transfer Unless Registered or Exempt; Contractual Restrictions on Transfers. Purchaser understands that Purchaser may not transfer any Shares unless such Shares are registered under the Securities Act or qualified under applicable state securities laws or unless, in the opinion of counsel to the Company, exemptions from such registration and qualification requirements are available. Purchaser understands that only the Company may file a registration statement with the SEC and that the Company is under no obligation to do so with respect to the Shares. Purchaser has also been advised that exemptions from registration and qualification may not be available or may not permit Purchaser to transfer all or any of the Shares in the amounts or at the times proposed by Purchaser. Purchaser further acknowledges that this Agreement imposes additional restrictions on transfer of the Shares.

3.5 SEC Rule 701. Shares that are issued pursuant to SEC Rule 701 promulgated under the Securities Act may become freely tradable by non-affiliates (under limited conditions regarding the method of sale) ninety (90) days after the first sale of Common Stock of the Company to the general public pursuant to a registration statement filed with and declared effective by the SEC, subject to the lengthier market standoff agreement contained in Section 4 of this Agreement or any other agreement entered into by Purchaser. Affiliates must comply with the provisions (other than the holding period requirements) of Rule 144 which permits certain limited sales of unregistered securities. Rule 144 is not presently available with respect to the Shares and, in any event, requires that the Shares be held for a minimum of six (6) months, and in certain cases one (1) year, after they have been purchased and paid for (within the meaning of Rule 144). Purchaser understands that use of a promissory note as payment for the Shares may not be deemed to be “full payment of the purchase price” within the meaning of Rule 144 unless certain conditions are met and that, accordingly, the Rule 144 holding period of such Shares may not begin to run until such Shares are fully paid for within the meaning of Rule 144. Purchaser understands that Rule 144 may indefinitely restrict transfer of the Shares so long as Purchaser remains an “affiliate” of the Company or if “current public information” about the Company (as defined in Rule 144) is not publicly available.
3.6 **Access to Information.** Purchaser has had access to all information regarding the Company and its present and prospective business, assets, liabilities and financial condition that Purchaser reasonably considers important in making the decision to purchase the Shares, and Purchaser has had ample opportunity to ask questions of the Company’s representatives concerning such matters and this investment.

3.7 **Understanding of Risks.** Purchaser is fully aware of: (a) the highly speculative nature of the investment in the Shares; (b) the financial hazards involved; (c) the lack of liquidity of the Shares and the restrictions on transferability of the Shares (e.g., that Purchaser may not be able to sell or dispose of the Shares or use them as collateral for loans); (d) the qualifications and backgrounds of the management of the Company; and (e) the tax consequences of investment in, and disposition of, the Shares.

3.8 **Purchase for Own Account for Investment.** Purchaser is purchasing the Shares for Purchaser’s own account for investment purposes only and not with a view to, or for sale in connection with, a distribution of the Shares within the meaning of the Securities Act. Purchaser has no present intention of selling or otherwise disposing of all or any portion of the Shares and no one other than Purchaser has any beneficial ownership of any of the Shares.

3.9 **No General Solicitation.** At no time was Purchaser presented with or solicited by any publicly issued or circulated newspaper, mail, radio, television or other form of general advertising or solicitation in connection with the offer, sale and purchase of the Shares.

3.10 **SEC Rule 144.** Purchaser has been advised that SEC Rule 144 promulgated under the Securities Act, which permits certain limited sales of unregistered securities, is not presently available with respect to the Shares and, in any event, requires that the Shares be held for a minimum of six (6) months, and in certain cases one (1) year, after they have been purchased and paid for (within the meaning of Rule 144), subject to the lengthier market standoff agreement contained in Section 4 of this Agreement or any other agreement entered into by Purchaser. Purchaser understands that Rule 144 may indefinitely restrict transfer of the Shares so long as Purchaser remains an “affiliate” of the Company or if “current public information” about the Company (as defined in Rule 144) is not publicly available.

4. **MARKET STANDOFF AGREEMENT.** Subject to the provisions of this Section, Purchaser agrees in connection with any registration of the Company’s securities under the Securities Act or other registered public offering that, upon the request of the Company or the underwriters managing any registered public offering of the Company’s securities, Purchaser will not sell or otherwise dispose of any Shares without the prior written consent of the Company or such managing underwriters, as the case may be, for a period of time (not to exceed one hundred eighty (180) days) after the effective date of such registration requested by such managing underwriters and subject to all restrictions as the Company or the managing underwriters may specify for employee-stockholders generally. The restricted period shall in any event terminate two (2) years after the closing date of the Company’s initial public offering. For purposes of this Section 4, the term “Company” shall include any wholly-owned subsidiary of the Company into which the Company merges or consolidates. In order to enforce the foregoing covenant, the Company shall have the right to place restrictive legends on the certificates representing the shares subject to this Section and to impose stop transfer instructions with respect to the Shares until the end of such period. Purchaser further agrees that the underwriters of any such registered public offering shall be third party beneficiaries of this Section 4 and agrees to enter into any agreement reasonably required by the underwriters to implement the foregoing. Notwithstanding anything in this Section to the contrary, for the avoidance of doubt, the foregoing provisions of this Section shall not apply to any registration of securities of the Company (a) under an employee benefit plan or (b) in a merger, consolidation, business combination or similar transaction.

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5. COMPANY’S REFUSAL RIGHT. Shares shall be subject to the restrictions on transfer and the granting of encumbrances thereon as provided in Section 5 hereof. Before any Shares held by Purchaser or any transferee of such Shares (either sometimes referred to herein as the “Holder”) may be sold or otherwise transferred (including, without limitation, a transfer by gift or operation of law), the Company and/or its assignee(s) will have a right of first refusal to purchase the Shares to be sold or transferred (the “Offered Shares”) on the terms and conditions set forth in this Section (the “Refusal Right”).

5.1 Notice of Proposed Transfer. The Holder of the Offered Shares will deliver to the Company a written notice (the “Notice”) stating: (a) the Holder’s bona fide intention to sell or otherwise transfer the Offered Shares; (b) the name and address of each proposed purchaser or other transferee of Offered Shares (“Proposed Transferee”); (c) the number of Offered Shares to be transferred to each Proposed Transferee; (d) the bona fide cash price or other consideration for which the Holder proposes to transfer the Offered Shares to each Proposed Transferee (the “Offered Price”); and (e) that the Holder acknowledges this Notice is an offer to sell the Offered Shares to the Company and/or its assignee(s) pursuant to the Company’s Refusal Right at the Offered Price as provided for in this Agreement.

5.2 Exercise of Refusal Right. At any time within thirty (30) days after the date the Notice is effective pursuant to Section 8.2, the Company and/or its assignee(s) may, by giving written notice to the Holder, elect to purchase all (or, with the consent of the Holder, less than all) the Offered Shares proposed to be transferred to any one or more of the Proposed Transferees named in the Notice, at the purchase price, determined as provided in Section 5.3 below.

5.3 Purchase Price. The purchase price for the Offered Shares purchased under this Section will be the Offered Price, provided that if the Offered Price consists of no legal consideration (as, for example, in the case of a transfer by gift), then the purchase price will be the fair market value of the Offered Shares as determined in good faith by the Company’s Board of Directors. If the Offered Price includes consideration other than cash, then the value of the non-cash consideration, as determined in good faith by the Company’s Board of Directors, will conclusively be deemed to be the cash equivalent value of such non-cash consideration.

5.4 Payment. The purchase price for the Offered Shares will be paid, at the option of the Company and/or its assignee(s) (as applicable), by check or by cancellation of all or a portion of any outstanding indebtedness owed by the Holder to the Company (or to such assignee, in the case of a purchase of Offered Shares by such assignee) or by any combination thereof. The purchase price will be paid without interest within sixty (60) days after the Company’s receipt of the Notice, or, at the option of the Company and/or its assignee(s), in the manner and at the time(s) set forth in the Notice.

5.5 Holder’s Right to Transfer. If all of the Offered Shares proposed in the Notice to be transferred to a given Proposed Transferee are not purchased by the Company and/or its assignee(s) as provided in this Section, then the Holder may sell or otherwise transfer such Offered Shares to such Proposed Transferee at the Offered Price or at a higher price, provided that (a) such sale or other transfer is consummated within one hundred twenty (120) days after the date the Notice is effective pursuant to Section 8.2, (b) any such sale or other transfer is effected in compliance with all applicable securities laws, and (c) such Proposed Transferee agrees in writing that the provisions of this Section will continue to apply to the Offered Shares in the hands of such Proposed Transferee. If the Offered Shares described
in the Notice are not transferred to such Proposed Transferee within such one hundred twenty (120) day period, then a new Notice must be given to the Company pursuant to which the Company will again be offered the Refusal Right before any Shares held by the Holder may be sold or otherwise transferred.

5.6 Exempt Transfers. Notwithstanding the foregoing, the following transfers of Shares will be exempt from the Refusal Right: (a) the transfer of any or all of the Shares during Purchaser’s lifetime by gift or on Purchaser’s death by will or intestacy to Purchaser’s “Immediate Family” (as defined below) or to a trust for the benefit of Purchaser or Purchaser’s Immediate Family, provided that each transferee agrees in a writing satisfactory to the Company that the provisions of this Section will continue to apply to the transferred Shares in the hands of such transferee; (b) any transfer of Shares made pursuant to a statutory merger or statutory consolidation of the Company with or into another entity or entities (except that, subject to Section 5.7, unless the agreement of merger or consolidation expressly otherwise provides, the Refusal Right will continue to apply thereafter to such Shares, in which case the surviving entity of such merger or consolidation shall succeed to the rights of the Company under this Section); or (c) any transfer of Shares pursuant to the winding up and dissolution of the Company. As used herein, the term “Immediate Family” will mean Purchaser’s spouse, the lineal descendant or antecedent, father, mother, brother or sister, child, adopted child, grandchild or adopted grandchild of Purchaser or Purchaser’s spouse, or the spouse of any of the above or Spousal Equivalent, as defined herein. As used herein, a person is deemed to be a “Spousal Equivalent” provided the following circumstances are true: (i) irrespective of whether or not the Purchaser and the Spousal Equivalent are the same sex, they are the sole spousal equivalent of the other for the last twelve (12) months, (ii) they intend to remain so indefinitely, (iii) neither are married to anyone else, (iv) both are at least 18 years of age and mentally competent to consent to contract, (v) they are not related by blood to a degree of closeness that which would prohibit legal marriage in the state in which they legally reside, (vi) they are jointly responsible for each other’s common welfare and financial obligations, and (vii) they reside together in the same residence for the last twelve (12) months and intend to do so indefinitely.

5.7 Termination of Refusal Right. The Refusal Right will terminate as to all Shares: (a) on the effective date of the first sale of Common Stock of the Company to the public pursuant to a registration statement filed with and declared effective by the SEC under the Securities Act or, if expressly approved by the Board as terminating the Refusal Right, under the laws of any other country having substantially the same effect (other than a registration statement relating solely to the issuance of Common Stock pursuant to a business combination or an employee incentive or benefit plan) or (b) on any transfer or conversion of Shares made pursuant to a statutory merger or statutory consolidation of the Company with or into another entity or entities if the common stock of the surviving entity or any direct or indirect parent entity thereof is registered under the Securities Exchange Act of 1934, as amended.

6. ADDITIONAL RESTRICTIONS UPON SHARE OWNERSHIP OR TRANSFER.

6.1 Rights as a Stockholder. Subject to the terms and conditions of this Agreement, Purchaser will have all of the rights of a Stockholder of the Company with respect to the Shares from and after the date that Shares are issued to Purchaser until such time as Purchaser disposes of the Shares or the Company and/or its assignee(s) exercise(s) the Refusal Right. Upon an exercise of the Refusal Right, Purchaser will have no further rights as a holder of the Shares so purchased upon such exercise, other than the right to receive payment for the Shares so purchased in accordance with the provisions of this Agreement, and Purchaser will promptly surrender the stock certificate(s) evidencing the Shares so purchased to the Company for transfer or cancellation.

6.2 Escrow. As security for Purchaser’s faithful performance of this Agreement, Purchaser agrees, immediately upon receipt of the stock certificate(s) evidencing the Shares, to deliver such certificate(s) to the Secretary of the Company or other designee of the Company (the “Escrow Holder”), who is hereby appointed to hold such certificate(s) in escrow and to take all such actions and to
effectuate all such transfers and/or releases of such Shares as are in accordance with the terms of this Agreement. Purchaser and the Company agree that Escrow Holder will not be liable to any party to this Agreement (or to any other person or entity) for any actions or omissions unless Escrow Holder is grossly negligent or intentionally fraudulent in carrying out the duties of Escrow Holder under this Agreement. Escrow Holder may rely upon any letter, notice or other document executed with any signature purported to be genuine and may rely on the advice of counsel and obey any order of any court with respect to the transactions contemplated by this Agreement. The Shares will be released from escrow upon termination of the Refusal Right.

6.3 Encumbrances on Shares. Without the Company’s prior written consent given with the approval of the Company’s Board of Directors, Purchaser may not grant a lien or security interest in, or pledge, hypothecate or encumber, any Shares.

6.4 Restrictions on Transfers. Shares may not be sold or otherwise transferred by Purchaser without the Company’s prior written consent. Purchaser hereby agrees that Purchaser shall make no disposition of the Shares (other than as permitted by this Agreement) unless and until:

(a) Purchaser shall have notified the Company of the proposed disposition and provided a written summary of the terms and conditions of the proposed disposition;

(b) Purchaser shall have complied with all requirements of this Agreement applicable to the disposition of the Shares, including but not limited to the Refusal Right and Market Standoff; and

(c) Purchaser shall have provided the Company with written assurances, in form and substance satisfactory to counsel for the Company, that:

(i) the proposed disposition does not require registration of the Shares under the Securities Act or under any state securities laws, and

(ii) all appropriate actions necessary for compliance with the registration and qualification requirements of the Securities Act and any state securities laws, or of any exemption from registration or qualification, available thereunder (including Rule 144) have been taken.

Each person (other than the Company) to whom the Shares are transferred by means of one of the permitted transfers specified in this Agreement must, as a condition precedent to the validity of such transfer, acknowledge in writing to the Company that such person is bound by the provisions of this Agreement and that the transferred Shares are subject to the Company’s Refusal Right granted hereunder and the market stand-off provisions of Section 4 hereof, to the same extent such Shares would be so subject if retained by the Purchaser.

6.5 Restrictive Legends and Stop-transfer Orders. Purchaser understands and agrees that the Company will place the legends set forth below or similar legends on any stock certificate(s) evidencing the Shares, together with any other legends that may be required by applicable laws, the Company’s Certificate of Incorporation or Bylaws, any other agreement between Purchaser and the Company or any agreement between Purchaser and any third party:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE
THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON PUBLIC RESALE AND TRANSFER, INCLUDING THE RIGHT OF FIRST REFUSAL HELD BY THE ISSUER AND/OR ITS ASSIGNEE(S), AND A MARKET STANDOFF AGREEMENT, AS SET FORTH IN A RESTRICTED STOCK PURCHASE AGREEMENT BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SHARES, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER. SUCH PUBLIC SALE AND TRANSFER RESTRICTIONS INCLUDING THE RIGHT OF FIRST REFUSAL AND THE MARKET STANDOFF ARE BINDING ON TRANSFEREES OF THESE SHARES.

Purchaser also agrees that, to ensure compliance with the restrictions imposed by this Agreement, the Company may issue appropriate “stop-transfer” instructions to its transfer agent, if any, and if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records. The Company will not be required (a) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (b) to treat as owner of such Shares, or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares have been so transferred.

7. TAX CONSEQUENCES. PURCHASER UNDERSTANDS THAT PURCHASER MAY SUFFER ADVERSE TAX CONSEQUENCES AS A RESULT OF PURCHASER’S PURCHASE OR DISPOSITION OF THE SHARES. PURCHASER REPRESENTS (a) THAT PURCHASER HAS CONSULTED WITH ANY TAX ADVISER THAT PURCHASER DEEMS ADVISABLE IN CONNECTION WITH THE PURCHASE OR DISPOSITION OF THE SHARES AND (b) THAT PURCHASER IS NOT RELYING ON THE COMPANY FOR ANY TAX ADVICE.

8. GENERAL PROVISIONS.

8.1 Successors and Assigns. The Company may assign any of its rights under this Agreement, including its right to purchase Shares under the Refusal Right. Neither Purchaser, nor any of Purchaser’s successors and assigns, may assign, whether voluntarily or by operation of law, any of its rights and obligations under this Agreement, except with the prior written consent of the Company. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Agreement will be binding upon Purchaser and Purchaser’s heirs, executors, administrators, legal representatives, successors and assigns.

8.2 Notices. Any and all notices required or permitted to be given to a party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed to provide such party sufficient notice under this Agreement on the earliest of the following: (i) at the time of personal delivery, if delivery is in person; (ii) at the time an electronic confirmation of receipt is received, if delivery is by email; (iii) at the time of transmission by facsimile, addressed to the other party at its facsimile number specified herein (or hereafter modified by subsequent notice to the parties hereto), with confirmation of receipt made by both telephone and printed confirmation sheet verifying successful transmission of the facsimile; (iv) one (1) business day after deposit with an express overnight courier for United States deliveries, or two (2) business days after such deposit for deliveries outside of the United
States, with proof of delivery from the courier requested; or (v) three (3) business days after deposit in the United States mail by certified mail (return receipt requested) for United States deliveries. Any notice for delivery outside the United States will be sent by email, facsimile or by express courier. Any notice not delivered personally or by email will be sent with postage and/or other charges prepaid and properly addressed to Purchaser at the last known address or facsimile number on the books of the Company, or at such other address or facsimile number as such other party may designate by one of the indicated means of notice herein to the other parties hereto or, in the case of the Company, to it at its principal place of business. Notices to the Company will be marked “Attention: Chief Financial Officer.” Notices by facsimile shall be machine verified as received.

8.3 Further Assurances. The parties agree to execute such further documents and instruments and to take such further actions as may be reasonably necessary to carry out the purposes and intent of this Agreement.

8.4 Entire Agreement. The Plan is incorporated herein by reference. The Plan and this Agreement constitute the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and supersede all prior understandings and agreements, between the parties hereto with respect to the specific subject matter hereof.

8.5 Severability. If any provision of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the parties hereto. If such clause or provision cannot be so enforced, such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement. Notwithstanding the forgoing, if the value of this Agreement based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

8.6 Execution. This Agreement may be entered into in two or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. This Agreement may be executed and delivered by facsimile and, upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

[The remainder of this page has intentionally been left blank]

[Signature page follows]
IN WITNESS WHEREOF, the Company has caused this Restricted Stock Purchase Agreement to be executed by its duly authorized representative, and Purchaser has executed this Restricted Stock Purchase Agreement, as of the date first set forth above.

FITBIT, INC.

By: ________________________________

Address: ________________________________

Email: ________________________________

PURCHASER

Address: ________________________________

Email: ________________________________
NOTICE OF RESTRICTED STOCK UNIT AWARD

FITBIT, INC.
AMENDED AND RESTATED 2007 STOCK PLAN

Unless otherwise defined herein, the terms defined in the Fitbit, Inc. (the “Company”) Amended and Restated 2007 Stock Plan (the “Plan”) shall have the same meanings in this Notice of Restricted Stock Unit Award (the “Notice”) and the attached Restricted Stock Unit Agreement (the “RSU Agreement”). You have been granted an award of Restricted Stock Units (“RSUs”) under the Plan subject to the terms and conditions of the Plan, this Notice and the attached RSU Agreement.

Name: __________________________
Address: _________________________
Number of RSUs: __________________________
Date of Grant: _______________________
Vesting Commencement Date: _______________________
Expiration Date: _______________________
The earlier to occur of: (a) the date on which settlement of all vested RSUs granted hereunder occurs, and (b) the tenth anniversary of the Date of Grant. This RSU expires earlier if your Continuous Service Status terminates earlier, as described in the RSU Agreement.
Vesting Schedule: Sample vesting language: [Subject to the limitations set forth in the Notice, the Plan and the RSU Agreement, one-third of the total number of RSUs will vest on the one year anniversary of the Vesting Commencement Date and an additional one-third of the total number of RSUs will vest on each twelve month anniversary thereafter so long as your Continuous Service Status continues.]
Additional Terms: ☐ If this box is checked, the additional terms and conditions set forth on Attachment 1 hereto (as executed by the Company) are applicable and are incorporated herein by reference. No document need be attached as Attachment 1 if the box is not checked.

By your signature and the signature of the Company’s representative on the Notice of Grant, you and the Company agree that this RSU is granted under and governed by the terms and conditions of the Plan, the Notice of Grant and the RSU Agreement. You acknowledge that the vesting of the RSUs pursuant to this Notice is earned only by Continuous Service Status. By accepting this RSU, you consent to electronic delivery as set forth in the RSU Agreement.

PARTICIPANT
FITBIT, INC.

Signature: __________________________ By: __________________________
Print Name: _________________________ Name: _________________________
Its: _______________________________
FITBIT, INC.
AMENDED AND RESTATED 2007 STOCK PLAN

Additional Terms and Conditions to Notice

Name: 
Number of RSUs: 
Date of Grant: 

The following terms and conditions apply to the RSUs described above and granted pursuant to the Notice of Restricted Stock Unit Award to which this Attachment 1 is attached:

IN VOLUNTARY TERMINATION

If (a) your employment is terminated by the Company or a successor company without Cause (as defined in your Vesting Agreement between the Company and you dated , 2015 (the “Vesting Agreement”)) or you terminate your employment for Good Reason (as defined in your Vesting Agreement), (b) the termination of your employment is other than as a result of your death or disability, (iii) such termination constitutes a “separation from service” (as defined under Treasury Regulation Section 1.409A-1(h)), and (iv) you satisfy the release requirement referenced in your Vesting Agreement, all of your then-unvested RSUs shall become fully vested.

IN WITNESS WHEREOF, Fitbit, Inc. has caused this Attachment to be executed by its duly-authorized officer as of the Date of Grant.

FOR FITBIT, INC.

By: 
Title: 

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You have been granted Restricted Stock Units ("RSUs") by Fitbit, Inc. (the "Company") subject to the terms, restrictions and conditions of the Plan, the Notice of Restricted Stock Unit Award (the "Notice") and this Restricted Stock Unit Agreement (this "RSU Agreement").

1. Settlement. Settlement of RSUs shall be made on or before March 15 of the calendar year following the calendar year of the applicable date of vesting under the vesting schedule set forth in the Notice. Settlement of RSUs shall be in Shares. Settlement means the delivery of the Shares vested under an RSU. No fractional RSUs or rights for fractional Shares shall be created pursuant to this RSU Agreement.

2. No Stockholder Rights. Unless and until such time as Shares are issued in settlement of vested RSUs, you shall have no ownership of the Shares allocated to the RSUs and shall have no right to dividends or to vote such Shares.

3. Dividend Equivalents. Dividends, if any (whether in cash or Shares), shall not be credited to you, except to the extent provided in Section 15 of the Plan.

4. No Transfer. RSUs may not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of in any manner other than by will or by the laws of descent or distribution or court order or unless otherwise permitted by the Administrator on a case-by-case basis.

5. Termination. The RSUs shall terminate on the Expiration Date or earlier as provided in this Section 5. If your Continuous Service Status terminates for any reason, all unvested RSUs shall be forfeited to the Company forthwith, and all rights you have to such RSUs shall immediately terminate. In case of any dispute as to whether your termination of Continuous Service Status has occurred, the Administrator shall have sole discretion to determine whether such termination has occurred and the effective date of such termination.

6. Limitations on Transfer of Stock. In addition to any other limitation on transfer created by applicable securities laws, you shall not assign, encumber or dispose of any interest in the Shares issued pursuant to this Agreement except with the Company’s prior written consent and in compliance with the provisions of the Plan, the Bylaws, the Company’s then current Insider Trading Policy, and applicable securities laws. The restrictions on transfer also include a prohibition on any short position, any “put equivalent position” or any “call equivalent position” by the RSU holder with respect to the RSU itself as well as any Shares issuable upon settlement of the RSU prior to the settlement thereof until the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

7. Restrictions Binding on Transferees. All transferees of Shares or any interest therein will receive and hold such Shares or interest subject to the provisions of this Agreement, including the transfer restrictions of Sections 4 and 6, the Bylaws, and the transferee shall acknowledge such restrictions in writing. Any sale or transfer of the Shares shall be void unless the provisions of this Agreement are satisfied.

8. Lock-Up Agreement. In connection with the initial public offering of the Company’s securities and upon request of the Company or the underwriters managing any underwritten offering of the Company’s securities, you hereby agree not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however and whenever acquired.
9. **Tax Consequences.** You acknowledge that you will recognize tax consequences in connection with the RSUs. You should consult a tax adviser regarding your tax obligations in the jurisdiction where you are subject to tax.

10. **Withholding Taxes and Stock Withholding.** Regardless of any action the Company or your actual employer (the “Employer”) takes with respect to any or all income tax, social insurance, payroll tax, payment on account or other tax-related withholding (“Tax-Related Items”), you acknowledge that the ultimate liability for all Tax-Related Items legally due by you is and remains your responsibility and that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the award, including the grant, vesting or settlement of the RSUs, the subsequent sale of Shares acquired pursuant to such settlement and the receipt of any dividends; and (ii) do not commit to structure the terms of the award or any aspect of the RSUs to reduce or eliminate your liability for Tax-Related Items. You acknowledge that if you are subject to Tax-Related Items in more than one jurisdiction, the Company and/or the Employer may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Prior to the settlement of your RSUs, you shall pay or make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all withholding and payment on account obligations of the Company and/or the Employer. With the Company’s consent, these arrangements may include, if permissible under local law, (a) withholding Shares that otherwise would be issued to you when your RSUs are settled, provided that the Company only withholds the amount of Shares necessary to satisfy the minimum statutory withholding amount, (b) having the Company withhold taxes from the proceeds of the sale of the Shares, either through a voluntary sale or through a mandatory sale arranged by the Company (on your behalf and you hereby authorize such sales by this authorization), or (c) any other arrangement mutually agreed by you and the Company; all under such rules as may be established by the Administrator and in compliance with the Company’s Insider Trading Policy and 10b5-1 Trading Plan Policy, if applicable; provided however, that if you are a Section 16 officer of the Company under the Exchange Act, then the Administrator (as constituted in accordance with Rule 16b-3 under the Exchange Act) shall establish the method of withholding from alternatives (a)-(c) above, and the Administrator shall establish the method prior to the Tax-Related Items withholding event. The Fair Market Value of these Shares, determined as of the effective date when taxes otherwise would have been withheld in cash, will be applied as a credit against the withholding taxes. You shall pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold as a result of your participation in the Plan or your purchase of Shares that cannot be satisfied by the means previously described. Finally, you acknowledge that the Company has no obligation to deliver Shares to you until you have satisfied the obligations in connection with the Tax-Related Items as described in this Section.

11. **Acknowledgement.** The Company and you agree that the RSUs are granted under and governed by the Notice, this RSU Agreement and the provisions of the Plan (incorporated herein by reference). You: (i) acknowledge receipt of a copy of the Plan, (ii) represent that you have carefully read and are familiar with their provisions, and (iii) hereby accept the RSUs subject to all of the terms and conditions set forth herein and those set forth in the Plan and the Notice. You hereby agree to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions relating to the Plan, the Notice and this RSU Agreement.
12. **Entire Agreement; Enforcement of Rights**. This RSU Agreement, the Plan and the Notice constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments or negotiations concerning the purchase of the Shares hereunder are superseded. No modification of or amendment to this RSU Agreement, nor any waiver of any rights under this RSU Agreement, shall be effective unless in writing and signed by the parties to this RSU Agreement. The failure by either party to enforce any rights under this RSU Agreement shall not be construed as a waiver of any rights of such party.

13. **Compliance with Laws and Regulations**. The issuance of Shares will be subject to and conditioned upon compliance by the Company and you with all applicable state, federal and foreign laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company’s securities may be listed or quoted at the time of such issuance or transfer. You may not be issued any Shares if such issuance would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations or the requirements of any stock exchange or market system upon which the Company’s securities may then be listed. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company’s legal counsel to be necessary to the lawful issuance and sale of any Shares shall relieve the Company of any liability in respect of the failure to issue or sell such shares.

14. **Governing Law; Severability**. If one or more provisions of this RSU Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this RSU Agreement, (ii) the balance of this RSU Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this RSU Agreement shall be enforceable in accordance with its terms. This RSU Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law. For purposes of litigating any dispute that may arise directly or indirectly from the Plan, the Notice and this RSU Agreement, the parties hereby submit and consent to litigation in the exclusive jurisdiction of the State of California and agree that any such litigation shall be conducted only in the courts of California in San Francisco County or the federal courts of the United States for the Northern District of California and no other courts.

15. **Legend on Certificates**. The certificates representing the Shares issued hereunder shall be subject to such stop transfer orders and other restrictions as the Administrator may deem advisable under the Plan, this Agreement, the Bylaws, or the rules, regulations, and other requirements of the Securities and Exchange Commission, any stock exchange upon which such shares of the Common Stock are listed, and any applicable Federal or state laws, and the Administrator may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

16. **Successors and Assigns**. The Company may assign any of its rights under this Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth herein, this Agreement will be binding upon you and your heirs, executors, administrators, legal representatives, successors and assigns.

11. **No Rights as Employee, Director or Consultant**. Nothing in this RSU Agreement confers upon you any right to continue your service relationship with the Company or a Parent, Subsidiary or Affiliate of the Company for any period of time, nor does it interfere in any way with your right or the Company’s right to terminate that relationship at any time, for any reason, with or without cause.

12. **Consent to Electronic Delivery of All Plan Documents and Disclosures**. By your acceptance of this RSU, you consent to the electronic delivery of the Notice, this RSU Agreement, the Plan, account statements, Plan prospectuses required by the Securities and Exchange Commission, U.S. financial
reports of the Company, and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements) or other communications or information related to the RSU. Electronic delivery may include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other delivery determined at the Company’s discretion. You acknowledge that you may receive from the Company a paper copy of any documents delivered electronically at no cost if you contact the Company by telephone, through a postal service or electronic mail at [insert email]. You further acknowledge that you will be provided with a paper copy of any documents delivered electronically if electronic delivery fails; similarly, you understand that you must provide on request to the Company or any designated third party a paper copy of any documents delivered electronically if electronic delivery fails. Also, you understand that your consent may be revoked or changed, including any change in the electronic mail address to which documents are delivered (if you have provided an electronic mail address), at any time by notifying the Company of such revised or revoked consent by telephone, postal service or electronic mail at [insert email]. Finally, you understand that you are not required to consent to electronic delivery.

13. Code Section 409A. For purposes of this RSU Agreement, a termination of employment will be determined consistent with the rules relating to a “separation from service” as defined in Section 409A of the Code and the regulations thereunder (“Section 409A”). Notwithstanding anything else provided herein, to the extent any payments provided under this RSU Agreement in connection with your termination of employment constitute deferred compensation subject to Section 409A, and you are deemed at the time of such termination of employment to be a “specified employee” under Section 409A, then such payment shall not be made or commence until the earlier of (i) the expiration of the six-month period measured from your separation from service or (ii) the date of your death following such a separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to you including, without limitation, the additional tax for which you would otherwise be liable under Section 409A(a)(1)(B) in the absence of such a deferral. To the extent any payment under this RSU Agreement may be classified as a “short-term deferral” within the meaning of Section 409A, such payment shall be deemed a short-term deferral, even if it may also qualify for an exemption from Section 409A under another provision of Section 409A. Payments pursuant to this section are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

14. Award Subject to Company Clawback or Recoupment. To the extent permitted by applicable law, the RSUs shall be subject to clawback or recoupment pursuant to any compensation clawback or recoupment policy adopted by the Board or required by law during the term of your employment or other Continuous Service Status that is applicable to you. In addition to any other remedies available under such policy, applicable law may require the cancellation of your RSUs (whether vested or unvested) and the recoupment of any gains realized with respect to your RSUs.

BY ACCEPTING THIS RSU, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.
GLOBAL NOTICE OF RESTRICTED STOCK UNIT AWARD

FITBIT, INC.
AMENDED AND RESTATED 2007 STOCK PLAN

Unless otherwise defined herein, the terms defined in the Fitbit, Inc. (the “Company”) Amended and Restated 2007 Stock Plan (the “Plan”) shall have the same meanings in this Global Notice of Restricted Stock Unit Award (the “Notice”) and the attached Global Restricted Stock Unit Agreement, including any special terms and conditions for your country set forth in the appendix attached hereto (collectively, the “RSU Agreement”). You have been granted an award of Restricted Stock Units (“RSUs”) under the Plan subject to the terms and conditions of the Plan, this Notice and the attached RSU Agreement.

Name: ______________________________________
Address: ____________________________________
Number of RSUs: ______________________________
Date of Grant: _________________________________
Vesting Commencement Date: _____________________
Expiration Date: The earlier to occur of: (a) the settlement of all vested RSUs granted hereunder, and (b) the tenth anniversary of the Date of Grant. The RSUs expire earlier if your Continuous Service Status terminates earlier, as described in the RSU Agreement.
Vesting Schedule: Sample vesting language: [25% of the total number of RSUs will vest on the twelve month anniversary of the Vesting Commencement Date and 25% of the total number of RSUs will vest on each annual anniversary thereafter so long as your Continuous Service Status continues.][Note: actual vesting language to match vesting schedule approved by the Board or Committee].
Additional Terms: ☐ If this box is checked, the additional terms and conditions set forth on Attachment 1 hereto (as executed by the Company) are applicable and are incorporated herein by reference. No document need be attached as Attachment 1 if the box is not checked.

By your signature and the signature of the Company’s representative on this Notice, you and the Company agree that this award of RSUs is granted under and governed by the terms and conditions of the Plan, this Notice and the RSU Agreement. You acknowledge that the vesting of the RSUs pursuant to this Notice is earned only by Continuous Service Status. You further acknowledge that the grant of these RSUs is in lieu of any grant of any other form of equity award (including stock options) that may have been set forth in any equity offer letter or other agreement between you and the Company preceding the Date of Grant set forth above. By accepting this award of RSUs, you consent to the electronic delivery and acceptance as further set forth in the RSU Agreement.

PARTICIPANT
Signature: ________________________________
Print Name: ______________________________

FITBIT, INC.
By: ______________________________________
Name: __________________________________
Its: ____________________________________
FIITBIT, INC.
AMENDED AND RESTATED 2007 STOCK PLAN

Additional Terms and Conditions to Notice

Name:
Number of RSUs:
Date of Grant:

The following terms and conditions apply to the RSUs described above and granted pursuant to the Global Notice of Restricted Stock Unit Award to which this Attachment 1 is attached:

IN VOLUNTARY TERMINATION

[Sample; for RSU recipient with acceleration terms]

All of your then-unvested RSUs shall become [fully vested] if,

(a) your Continuous Service Status is terminated by the Company or a Parent, Subsidiary or Affiliate of the Company, or a successor company without Cause (as defined in your Offer Letter between you and the Company or a Parent, Subsidiary or Affiliate of the Company that hired you, dated , 2015 (the “Offer Letter”)) or you terminate your Continuous Service Status for Good Reason (as defined in your Offer Letter), or

(b) the termination of your Continuous Service Status is other than as a result of your death or disability, and (i) such termination constitutes a “separation from service” (as defined under Treasury Regulation Section 1.409A-1(h)), and (ii) you satisfy the release requirement referenced in your Offer Letter.

IN WITNESS WHEREOF , Fitbit, Inc. has caused this Attachment to be executed by its duly-authorized officer as of the Date of Grant.

FITBIT, INC.

By: ____________________________________________
Title: ____________________________________________
You have been granted Restricted Stock Units ("RSUs") by Fitbit, Inc. (the "Company") subject to the terms, restrictions and conditions of the Plan, the Global Notice of Restricted Stock Unit Award (the "Notice") and this Global Restricted Stock Unit Agreement, including any special terms and conditions for your country set forth in the appendix attached hereto (the "Appendix") (collectively, this "RSU Agreement").

1. Nature of Grant. In accepting this award of RSUs, you acknowledge, understand and agree that:

   (a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

   (b) the grant of the RSUs is voluntary and occasional and does not create any contractual or other right to receive future awards of RSUs, or benefits in lieu of RSUs, even if RSUs have been granted in the past;

   (c) all decisions with respect to future RSUs or other grants, if any, will be at the sole discretion of the Company;

   (d) you are voluntarily participating in the Plan;

   (e) the RSUs and the Shares subject to the RSUs, and the income and value of same, are not intended to replace any pension rights or compensation;

   (f) the RSUs and the Shares subject to the RSUs, and the income and value of same, are not part of normal or expected compensation for purposes of calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments;

   (g) unless otherwise agreed with the Company, the RSUs and any Shares acquired under the Plan, and the income and value of same, are not granted as consideration for, or in connection with, any service you may provide as a director of the Company, or a Parent, Subsidiary or Affiliate of the Company;

   (h) the future value of the underlying Shares is unknown, indeterminable and cannot be predicted with certainty;

   (i) no claim or entitlement to compensation or damages shall arise from forfeiture of the RSUs resulting from the termination of your Continuous Service Status (for any reason whatsoever whether or not later found to be invalid or in breach of labor laws in the jurisdiction where you are providing service or the terms of your employment or service agreement, if any), and in consideration of the grant of the RSUs to which you are otherwise not entitled, you irrevocably agree never to institute any claim against the Company, the Employer (as defined below), or any other Parent, Subsidiary or Affiliate of the Company, waive your ability, if any, to bring any such claim, and release the Company, the Employer and its Parent, Subsidiaries or Affiliates from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, you shall be deemed irrevocably to have agreed not to pursue such claim and agree to execute any and all documents necessary to request dismissal or withdrawal of such claim; and
(j) the following provisions apply only if you are providing service outside the United States:

(i) the RSUs and the Shares subject to the RSUs, and the income and value of same, are not part of normal or expected compensation or salary for any purpose; and

(ii) neither the Company, the Employer nor any Parent, Subsidiary or Affiliate of the Company shall be liable for any foreign exchange rate fluctuation between your local currency and the United States Dollar that may affect the value of the RSUs or the subsequent sale of any Shares acquired upon settlement.

2. Settlement. Settlement of RSUs shall be made on or before March 15 of the calendar year following the calendar year of the applicable date of vesting under the vesting schedule set forth in the Notice. Settlement of RSUs shall be in Shares. Settlement means the delivery of the Shares vested under an RSU. No fractional RSUs or rights for fractional Shares shall be created pursuant to this RSU Agreement.

3. No Stockholder Rights. Unless and until such time as Shares are issued in settlement of vested RSUs, you shall have no ownership of the Shares allocated to the RSUs and shall have no right to dividends or to vote such Shares.

4. Dividend Equivalents. Dividends, if any (whether in cash or Shares), shall not be credited to you except to the extent provided in Section 15 of the Plan.

5. No Transfer. RSUs may not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of in any manner other than by will or by the laws of descent or distribution or court order or unless otherwise permitted by the Administrator on a case-by-case basis.

6. Termination. The RSUs shall terminate on the Expiration Date or earlier as provided in this Section 6. If your Continuous Service Status terminates for any reason, all unvested RSUs shall be forfeited to the Company forthwith, and all rights you have to such RSUs shall immediately terminate, without payment of any consideration to you. For purposes of this award of RSUs, your Continuous Service Status will be considered terminated as of the date you are no longer providing active services (regardless of the reason for such termination and whether or not later found to be invalid or in breach of labor laws in the jurisdiction where you are employed or the terms of your employment or service agreement, if any) and will not be extended by any notice period mandated under local employment laws (e.g., Continuous Service Status would not include a period of “garden leave” or similar period). In case of any dispute as to whether your termination of Continuous Service Status has occurred, the Administrator shall have sole discretion to determine whether such termination has occurred (including whether you may still be considered to be providing services while on a leave of absence) and the effective date of such termination.

7. Limitations on Transfer of Stock. In addition to any other limitation on transfer created by applicable securities laws, you shall not assign, encumber or dispose of any interest in the Shares issued pursuant to this RSU Agreement except with the Company’s prior written consent and in compliance with the provisions of the Plan, the Bylaws, the Company’s then current Insider Trading Policy, and applicable securities and exchange control laws. The restrictions on transfer also include a prohibition on any short position, any “put equivalent position” or any “call equivalent position” by you with respect to the RSUs themselves as well as any Shares issuable upon settlement of the RSUs prior to the settlement thereof until the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.
8. **Restrictions Binding on Transferees.** All transferees of Shares or any interest therein will receive and hold such Shares or interest subject to the provisions of this RSU Agreement, including the transfer restrictions of Sections 5 and 7, the Bylaws, and the transferee shall acknowledge such restrictions in writing. Any sale or transfer of the Shares shall be void unless the provisions of this RSU Agreement are satisfied.

9. **Lock-Up Agreement.** In connection with the initial public offering of the Company’s securities and upon request of the Company or the underwriters managing any underwritten offering of the Company’s securities, you hereby agree not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however and whenever acquired (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed 180 days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the public offering.

10. **Tax Consequences.** You acknowledge that you will recognize certain consequences related to income tax, national or social insurance contributions, payroll tax, fringe benefits tax, payment on account or other tax-related items ("Tax-Related Items") in connection with the RSUs. You should consult a tax adviser regarding your Tax-Related Items obligations in the jurisdiction where you are subject to tax.

11. **Responsibility for Taxes.** Regardless of any action the Company or, if different, your actual employer (the “Employer”) takes with respect to any or all Tax-Related Items withholding, you acknowledge that the ultimate liability for all Tax-Related Items legally due by you is and remains your responsibility and that the Company and/or the Employer (1) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the award, including the grant, vesting or settlement of the RSUs, the subsequent sale of Shares acquired pursuant to such settlement and the receipt of any dividends; and (2) do not commit to structure the terms of the award or any aspect of the RSUs to reduce or eliminate your liability for Tax-Related Items or achieve any particular tax result. You acknowledge that if you are subject to Tax-Related Items in more than one jurisdiction, the Company and/or the Employer may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Prior to the settlement of your RSUs, you shall pay or make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items withholding and payment on account obligations of the Company and/or the Employer. In this regard, you authorize the Company and/or the Employer, and their respective agents, at their discretion, to withhold all applicable Tax-Related Items legally payable by you from your wages or other cash compensation paid to you by the Company and/or the Employer. With the Company’s consent, these arrangements may also include, if permissible under local law, (a) withholding Shares that otherwise would be issued to you when your RSUs are settled, provided that the Company only withholds the amount of Shares necessary to satisfy the minimum statutory withholding amount, (b) having the Company withhold taxes from the proceeds of the sale of the Shares, either through a voluntary sale or through a mandatory sale arranged by the Company (on your behalf pursuant to this authorization), (c) payment by you of an amount equal to the Tax-Related Items directly by cash, cheque, wire transfer, bank draft or money order payable to the Company, or (d) any other arrangement approved by the Company; all under such rules as may be established by the Administrator and in compliance with the Company’s Insider Trading Policy and 10b5-1 Trading Plan Policy, if applicable; provided however, that if you are a Section 16 officer of the Company under the Exchange Act, then the Administrator (as constituted in accordance with Rule 16b-3 under the Exchange Act) shall establish the method of withholding from alternatives (a)-(d) above, and the Administrator shall establish the method prior to the taxable or withholding event. The Fair Market Value of these Shares, determined as of the effective date when taxes otherwise would have been withheld in cash, will be applied as a credit against the Tax-Related Items.
Depending on the withholding method, the Company may withhold or account for Tax-Related Items by considering applicable minimum statutory withholding rates or other applicable withholding rates, including maximum applicable rates, in which case you will receive a refund of any over-withheld amount in cash and will have no entitlement to the Shares equivalent. If the obligation for Tax-Related Items is satisfied by withholding in Shares, for tax purposes, you are deemed to have been issued the full number of Shares subject to the vested RSUs, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items.

Finally, you agree to pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold as a result of your participation in the Plan or the vesting and settlement of the RSUs that cannot be satisfied by the means previously described. You acknowledge that the Company has no obligation to deliver Shares to you until you have satisfied the obligations in connection with the Tax-Related Items as described in this Section 11.

12. **Data Privacy.** You hereby explicitly and unambiguously consent to the collection, use and transfer, in electronic or other form, of your personal data as described in this RSU Agreement and any other RSU grant materials by and among, as applicable, the Company, the Employer and any other Parent, Subsidiaries or Affiliates, for the exclusive purpose of implementing, administering and managing your participation in the Plan.

You understand that the Company and the Employer may hold certain personal information about you, including, but not limited to, your name, home address and telephone number, date of birth, social security number or other identification number, salary, nationality, job title, any shares of stock or directorships held in the Company, details of all RSUs or any other entitlement to shares of stock awarded, canceled, exercised, vested, unvested or outstanding in your favor (“Data”), for the exclusive purpose of implementing, administrating and managing the Plan.

You understand that Data will be transferred to the stock plan service provider as may be designated by the Company from time to time, which is assisting the Company with the implementation, administration and management of the Plan. You understand that the recipients of Data may be located in the United States or elsewhere, and that the recipients’ country (e.g., the United States) may have different data privacy laws and protections than your country. You understand that if you reside outside the United States, you may request a list with the names and addresses of any potential recipients of Data by contacting your local human resources representative. You authorize the Company, the designated broker and any other possible recipients which may assist the Company (presently or in the future) with implementing, administrating and managing your participation in the Plan.

You understand that Data will be held only as long as is necessary to implement, administer and manage your participation in the Plan. You understand that if you reside outside the United States, you may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing your local human resources representative. Further, you understand that you are providing the consents herein on a purely voluntary basis. If you do not consent, or if you later seek to revoke your consent, your employment status or service and career with the Employer will not be adversely affected. The only adverse consequence of refusing or withdrawing your consent is that the Company would not be able to grant you RSUs or other equity awards or administer or maintain such awards. Therefore, you understand that refusing or withdrawing your consent may affect your ability to participate in the Plan. For more information on the consequences of your refusal to consent or withdrawal of consent, you understand that you may contact your local human resources representative.

13. **Acknowledgement.** The Company and you agree that the RSUs are granted under and governed by the Notice, this RSU Agreement and the provisions of the Plan (incorporated herein by reference).
You: (i) acknowledge receipt of a copy of the Plan, (ii) represent that you have carefully read and are familiar with the provisions in the grant documents, and (iii) hereby accept the RSUs subject to all of the terms and conditions set forth in this RSU Agreement and those set forth in the Plan and the Notice. You hereby agree to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions relating to the Plan, the Notice and this RSU Agreement.

14. **Entire Agreement; Enforcement of Rights.** This RSU Agreement, the Plan and the Notice constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments or negotiations concerning the purchase of the Shares hereunder are superseded. No modification of or amendment to this RSU Agreement, nor any waiver of any rights under this RSU Agreement, shall be effective unless in writing and signed by the parties to this RSU Agreement. The failure by either party to enforce any rights under this RSU Agreement shall not be construed as a waiver of any rights of such party.

15. **Compliance with Laws and Regulations.** The issuance of Shares will be subject to and conditioned upon compliance by the Company and you with all applicable state, federal and foreign laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company’s Common Stock may be listed or quoted at the time of such issuance or transfer, which compliance the Company shall, in its absolute discretion, deem necessary or advisable. You may not be issued any Shares if such issuance would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations or the requirements of any stock exchange or market system upon which the Company’s securities may then be listed. Further, you agree that the Company shall have unilateral authority to amend the Plan and this RSU Agreement without your consent to the extent necessary to comply with securities or other laws applicable to issuance of Shares. The inability of the Company to obtain from any regulatory body having the jurisdiction and authority deemed by the Company’s legal counsel to be necessary to the lawful issuance and sale of any Shares shall relieve the Company of any liability in respect of the failure to issue or sell such Shares.

16. **No Advice Regarding Grant.** The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding your participation in the Plan, or your acquisition or sale of the underlying Shares. You are hereby advised to consult with your own personal tax, legal and financial advisors regarding your participation in the Plan before taking any action related to the Plan.

17. **Governing Law; Venue.** This RSU Agreement, all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law. For purposes of litigating any dispute that may arise directly or indirectly from the Plan, the Notice and this RSU Agreement, the parties hereby submit and consent to litigation in the exclusive jurisdiction of the State of California and agree that any such litigation shall be conducted only in the courts of California in San Francisco County or the federal courts of the United States for the Northern District of California and no other courts.

18. **Severability.** If one or more provisions of this RSU Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this RSU Agreement, (ii) the balance of this RSU Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this RSU Agreement shall be enforceable in accordance with its terms.

19. **Legend on Certificates.** The certificates representing the Shares issued hereunder shall be subject to such stop transfer orders and other restrictions as the Administrator may deem advisable under the Plan, this RSU Agreement, the Bylaws, or the rules, regulations, and other requirements of the U.S.
Securities and Exchange Commission, any stock exchange upon which such Shares are listed, and any applicable federal, state or foreign laws, and the Administrator may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

20. **Successors and Assigns**. The Company may assign any of its rights under this RSU Agreement. This RSU Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth herein, this RSU Agreement will be binding upon you and your heirs, executors, administrators, legal representatives, successors and assigns.

21. **No Rights as Employee, Director or Consultant**. Nothing in this RSU Agreement confers upon you any right to the Continuous Service Status with the Company or a Parent, Subsidiary or Affiliate of the Company for any period of time, nor does it interfere in any way with your right or the Company’s right to terminate your Continuous Service Status at any time, for any reason, with or without cause.

22. **Consent to Electronic Delivery and Acceptance of All Plan Documents and Disclosures**. By your acceptance of this award of RSUs, you consent to the electronic delivery of the Notice, this RSU Agreement, the Plan, account statements, Plan prospectuses required by the U.S. Securities and Exchange Commission, U.S. financial reports of the Company, and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements) or other communications or information related to the RSUs. Electronic delivery may include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other delivery determined at the Company’s discretion. You acknowledge that you may receive from the Company a paper copy of any documents delivered electronically at no cost if you contact the Company by telephone, through a postal service or electronic mail at [insert email]. You further acknowledge that you will be provided with a paper copy of any documents delivered electronically if electronic delivery fails; similarly, you understand that you must provide on request to the Company or any designated third party a paper copy of any documents delivered electronically if electronic delivery fails. You agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company. Also, you understand that your consent may be revoked or changed, including any change in the electronic mail address to which documents are delivered (if you have provided an electronic mail address), at any time by notifying the Company of such revised or revoked consent by telephone, postal service or electronic mail at [insert email]. Finally, you understand that you are not required to consent to electronic delivery.

23. **Insider Trading Restrictions/Market Abuse Laws**. You acknowledge that, depending on your country, you may be subject to insider trading restrictions and/or market abuse laws, which may affect your ability to acquire or sell the Shares or rights to Shares under the Plan during such times as you are considered to have “inside information” regarding the Company (as defined by the laws in your country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. You acknowledge that it is your responsibility to comply with any applicable restrictions, and you are advised to speak to your personal advisor on this matter.

24. **Language**. If you have received this RSU Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

25. **Appendix**. Notwithstanding any provisions in this Global Restricted Stock Unit Agreement, this award of RSUs shall be subject to any special terms and conditions set forth in any Appendix hereto for your country. Moreover, if you relocate to one of the countries included in the Appendix, the special terms and conditions for such country will apply to you, to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. The Appendix constitutes part of this RSU Agreement.
26. **Imposition of Other Requirements.** The Company reserves the right to impose other requirements on your participation in the Plan, on the RSUs and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require you to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

27. **Waiver.** You acknowledge that a waiver by the Company of breach of any provision of this RSU Agreement shall not operate or be construed as a waiver of any other provision of this RSU Agreement, or of any subsequent breach by you or any other Participant.

28. **Code Section 409A.** For purposes of this RSU Agreement, a termination of employment will be determined consistent with the rules relating to a “separation from service” as defined in Section 409A of the Code and the regulations thereunder (“Section 409A”). Notwithstanding anything else provided herein, to the extent any payments provided under this RSU Agreement in connection with your termination of employment constitute deferred compensation subject to Section 409A, and you are deemed at the time of such termination of employment to be a “specified employee” under Section 409A, then such payment shall not be made or commence until the earlier of (i) the expiration of the six-month period measured from your separation from service or (ii) the date of your death following such a separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to you including, without limitation, the additional tax for which you would otherwise be liable under Section 409A(a)(1)(B) in the absence of such a deferral. To the extent any payment under this RSU Agreement may be classified as a “short-term deferral” within the meaning of Section 409A, such payment shall be deemed a short-term deferral, even if it may also qualify for an exemption from Section 409A under another provision of Section 409A. Payments pursuant to this Section 28 are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

29. **Award Subject to Company Clawback or Recoupment.** To the extent permitted by applicable law, the RSUs shall be subject to clawback or recoupment pursuant to any compensation clawback or recoupment policy adopted by the Board or required by law during the term of your employment or other Continuous Service Status that is applicable to you. In addition to any other remedies available under such policy, applicable law may require the cancellation of your RSUs (whether vested or unvested) and the recoupment of any gains realized with respect to your RSUs.

BY ACCEPTING THIS AWARD OF RSUS, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.
FITBIT, INC.

2015 EQUITY INCENTIVE PLAN

1. PURPOSE. The purpose of this Plan is to provide incentives to attract, retain and motivate eligible persons whose present and potential contributions are important to the success of the Company, and any Parents, Subsidiaries and Affiliates that exist now or in the future, by offering them an opportunity to participate in the Company’s future performance through the grant of Awards. Capitalized terms not defined elsewhere in the text are defined in Section 28.

2. SHARES SUBJECT TO THE PLAN.

2.1. Number of Shares Available. Subject to Sections 2.6 and 21 and any other applicable provisions hereof, the total number of Shares reserved and available for grant and issuance pursuant to this Plan as of the date of adoption of the Plan by the Board, is that number of reserved shares not issued or subject to outstanding grants under the Company’s 2007 Stock Plan (the “Prior Plan”) on the Effective Date (as defined below), plus (a) shares that are subject to stock options or other awards granted under the Prior Plan that cease to be subject to such stock options or other awards by forfeiture or otherwise after the Effective Date, (b) shares issued under the Prior Plan before or after the Effective Date pursuant to the exercise of stock options that are, after the Effective Date, forfeited, (c) shares issued under the Prior Plan that are repurchased by the Company at the original issue price and (d) shares that are subject to stock options or other awards under the Prior Plan that are used to pay the exercise price of an option or withheld to satisfy the tax withholding obligations related to any award. Any Class B common stock that was issued and outstanding under the Prior Plan, but which becomes available for issuance under this Plan pursuant to this Section 2.1 shall be issued as Shares of Class A common stock.

2.2. Lapsed, Returned Awards. Shares subject to Awards, and Shares issued under the Plan under any Award, will again be available for grant and issuance in connection with subsequent Awards under this Plan to the extent such Shares: (a) are subject to issuance upon exercise of an Option or SAR granted under this Plan but which cease to be subject to the Option or SAR for any reason other than exercise of the Option or SAR; (b) are subject to Awards granted under this Plan that are forfeited or are repurchased by the Company at the original issue price; (c) are subject to Awards granted under this Plan that otherwise terminate without such Shares being issued; or (d) are surrendered pursuant to an Exchange Program. To the extent an Award under the Plan is paid out in cash or other property rather than Shares, such cash payment will not result in reducing the number of Shares available for issuance under the Plan. Shares used to pay the exercise price of an Award or withheld to satisfy the tax withholding obligations related to an Award will become available for future grant or sale under the Plan. For the avoidance of doubt, Shares that otherwise become available for grant and issuance because of the provisions of this Section 2.2 shall not include Shares subject to Awards that initially became available because of the substitution clause in Section 2.2 hereof.

2.3. Minimum Share Reserve. At all times the Company shall reserve and keep available a sufficient number of Shares as shall be required to satisfy the requirements of all outstanding Awards granted under this Plan.

2.4. Automatic Share Reserve Increase. The number of Shares available for grant and issuance under the Plan shall be increased on January 1, of each of 2016 through 2025, by the lesser of (a) five percent (5%) of the number of shares of Class A common stock and Class B common stock issued and outstanding on each December 31 immediately prior to the date of increase or (b) such number of Shares determined by the Board.
2.5. **Limitations.** No more than 25,000,000 Shares shall be issued pursuant to the exercise of ISOs. No Participant will be eligible to receive more than 2,000,000 Shares in any calendar year under this Plan pursuant to the grant of Awards except that new Employees (including new Employees who are also officers and directors) are eligible to receive up to a maximum of 4,000,000 Shares in the calendar year in which they commence their employment.

2.6. **Adjustment of Shares.** If the number of outstanding shares of Common Stock of the Company is changed by a stock dividend, recapitalization, stock split, reverse stock split, subdivision, combination, reclassification or similar change in the capital structure of the Company, without consideration, then (a) the number of Shares reserved for issuance and future grant under the Plan set forth in Section 2.1, including Shares reserved under sub-clauses (a)-(e) of Section 2.1, (b) the Exercise Prices of and number of Shares subject to outstanding Options and SARs, (c) the number of Shares subject to other outstanding Awards, (d) the maximum number of Shares that may be issued as ISOs set forth in Section 2.5, (e) the maximum number of Shares that may be issued to an individual or to a new Employee in any one calendar year set forth in Section 3, and (f) the number of Shares that may be granted as Awards to Non-Employee Directors as set forth in Section 12, shall be proportionately adjusted, subject to any required action by the Board or the stockholders of the Company and in compliance with applicable securities laws; provided that fractions of a Share will not be issued.

3. **ELIGIBILITY.** ISOs may be granted only to Employees. All other Awards may be granted to Employees, Consultants, Directors and Non-Employee Directors; provided such Consultants, Directors and Non-Employee Directors render bona fide services not in connection with the offer and sale of securities in a capital-raising transaction.

4. **ADMINISTRATION.**

4.1. **Committee Composition; Authority.** This Plan will be administered by the Committee or by the Board acting as the Committee. Subject to the general purposes, terms and conditions of this Plan, and to the direction of the Board, the Committee will have full power to implement and carry out this Plan, except, however, the Board shall establish the terms for the grant of an Award to Non-Employee Directors. The Committee will have the authority to:

(a) construe and interpret this Plan, any Award Agreement and any other agreement or document executed pursuant to this Plan;

(b) prescribe, amend and rescind rules and regulations relating to this Plan or any Award;

(c) select persons to receive Awards;

(d) determine the form and terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Awards may vest and be exercised (which may be based on performance criteria) or settled, any vesting acceleration or waiver of forfeiture restrictions, the method to satisfy tax withholding obligations or any other tax liability legally due and any restriction or limitation regarding any Award or the Shares relating thereto, based in each case on such factors as the Committee will determine;

(e) determine the number of Shares or other consideration subject to Awards;

(f) determine the Fair Market Value in good faith and interpret the applicable provisions of this Plan and the definition of Fair Market Value in connection with circumstances that impact the Fair Market Value, if necessary;
(g) determine whether Awards will be granted singly, in combination with, in tandem with, in replacement of, or as alternatives to, other Awards under this Plan or any other incentive or compensation plan of the Company or any Parent, Subsidiary or Affiliate;

(h) grant waivers of Plan or Award conditions;

(i) determine the vesting, exercisability and payment of Awards;

(j) correct any defect, supply any omission or reconcile any inconsistency in this Plan, any Award or any Award Agreement;

(k) determine whether an Award has been earned;

(l) determine the terms and conditions of any, and to institute any Exchange Program;

(m) reduce or waive any criteria with respect to Performance Factors;

(n) adjust Performance Factors to take into account changes in law and accounting or tax rules as the Committee deems necessary or appropriate to reflect the impact of extraordinary or unusual items, events or circumstances to avoid windfalls or hardships provided that such adjustments are consistent with the regulations promulgated under Section 162(m) of the Code with respect to persons whose compensation is subject to Section 162(m) of the Code;

(o) adopt rules and/or procedures (including the adoption of any subplan under this Plan) relating to the operation and administration of the Plan to accommodate requirements of local law and procedures outside of the United States;

(p) make all other determinations necessary or advisable for the administration of this Plan;

(q) delegate any of the foregoing to a subcommittee consisting of one or more executive officers pursuant to a specific delegation as permitted by applicable law, including Section 157(c) of the Delaware General Corporation Law; and

(r) to exercise negative discretion on Performance Awards, reducing or eliminating the amount to be paid to Participants.

4.2. Committee Interpretation and Discretion. Any determination made by the Committee with respect to any Award shall be made in its sole discretion at the time of grant of the Award or, unless in contravention of any express term of the Plan or Award, at any later time, and such determination shall be final and binding on the Company and all persons having an interest in any Award under the Plan. Any dispute regarding the interpretation of the Plan or any Award Agreement shall be submitted by the Participant or Company to the Committee for review. The resolution of such a dispute by the Committee shall be final and binding on the Company and the Participant. The Committee may delegate to one or more executive officers the authority to review and resolve disputes with respect to Awards held by Participants who are not Insiders, and such resolution shall be final and binding on the Company and the Participant.

4.3. Section 162(m) of the Code and Section 16 of the Exchange Act. When necessary or desirable for an Award to qualify as “performance-based compensation” under Section 162(m) of the Code, the Committee administering the Plan in accordance with the requirements of Rule 16b-3 and Section 162(m) of the Code shall consist of at least two individuals, each of whom qualifies as (a) a Non-Employee Director under Rule 16b-3, and (b) an “outside director” pursuant to Code Section 162(m) and the regulations issued thereunder. At least two (or a majority if more than two then serve on the
Committee) such “outside directors” shall approve the grant of such Award and timely determine (as applicable) the Performance Period and any Performance Factors upon which vesting or settlement of any portion of such Award is to be subject. When required by Section 162(m) of the Code, prior to settlement of any such Award at least two (or a majority if more than two then serve on the Committee) such “outside directors” then serving on the Committee shall determine and certify in writing the extent to which such Performance Factors have been timely achieved and the extent to which the Shares subject to such Award have thereby been earned. Awards granted to Participants who are subject to Section 16 of the Exchange Act must be approved by two or more “non-employee directors” (as defined in the regulations promulgated under Section 16 of the Exchange Act). With respect to Participants whose compensation is subject to Section 162(m) of the Code, and provided that such adjustments are consistent with the regulations promulgated under Section 162(m) of the Code, the Committee may adjust the performance goals to account for changes in law and accounting and to make such adjustments as the Committee deems necessary or appropriate to reflect the impact of extraordinary or unusual items, events or circumstances to avoid windfalls or hardships, including without limitation (a) restructurings, discontinued operations, extraordinary items, and other unusual or non-recurring charges, (b) an event either not directly related to the operations of the Company or not within the reasonable control of the Company’s management, or (c) a change in accounting standards required by generally accepted accounting principles.

4.4. Documentation. The Award Agreement for a given Award, the Plan and any other documents may be delivered to, and accepted by, a Participant or any other person in any manner (including electronic distribution or posting) that meets applicable legal requirements.

4.5. Foreign Award Recipients. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in other countries in which the Company and its Subsidiaries and Affiliates operate or have employees or other individuals eligible for Awards, the Committee, in its sole discretion, shall have the power and authority to: (a) determine which Subsidiaries and Affiliates shall be covered by the Plan; (b) determine which individuals outside the United States are eligible to participate in the Plan; (c) modify the terms and conditions of any Award granted to individuals outside the United States to comply with applicable foreign laws; (d) establish subplans and modify exercise procedures and other terms and procedures, to the extent the Committee determines such actions to be necessary or advisable (and such subplans and/or modifications shall be attached to this Plan as appendices); provided, however, that no such subplans and/or modifications shall increase the share limitations contained in Section 2.1 hereof; and (e) take any action, before or after an Award is made, that the Committee determines to be necessary or advisable to obtain approval or comply with any local governmental regulatory exemptions or approvals. Notwithstanding the foregoing, the Committee may not take any actions hereunder, and no Awards shall be granted, that would violate the Exchange Act or any other applicable United States securities law, the Code, or any other applicable United States governing statute or law.

5. OPTIONS. An Option is the right but not the obligation to purchase a Share, subject to certain conditions, if applicable. The Committee may grant Options to eligible Employees, Consultants and Directors and will determine whether such Options will be Incentive Stock Options within the meaning of the Code (“ISOs”) or Nonqualified Stock Options (“NSOs”), the number of Shares subject to the Option, the Exercise Price of the Option, the period during which the Option may vest and be exercised, and all other terms and conditions of the Option, subject to the following terms of this section.

5.1. Option Grant. Each Option granted under this Plan will identify the Option as an ISO or an NSO. An Option may be, but need not be, awarded upon satisfaction of such Performance Factors during any Performance Period as are set out in advance in the Participant’s individual Award Agreement. If the Option is being earned upon the satisfaction of Performance Factors, then the Committee will: (a) determine the nature, length and starting date of any Performance Period for each Option; and (b) select from among the Performance Factors to be used to measure the performance, if any. Performance Periods may overlap and Participants may participate simultaneously with respect to Options that are subject to different performance goals and other criteria.
5.2. Date of Grant. The date of grant of an Option will be the date on which the Committee makes the determination to grant such Option, or a specified future date. The Award Agreement will be delivered to the Participant within a reasonable time after the granting of the Option.

5.3. Exercise Period. Options may be vested and exercisable within the times or upon the conditions as set forth in the Award Agreement governing such Option; provided, however, that no Option will be exercisable after the expiration of ten (10) years from the date the Option is granted; and provided further that no ISO granted to a person who, at the time the ISO is granted, directly or by attribution owns more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any Parent or Subsidiary (“Ten Percent Stockholder”) will be exercisable after the expiration of five (5) years from the date the ISO is granted. The Committee also may provide for Options to become exercisable at one time or from time to time, periodically or otherwise, in such number of Shares or percentage of Shares as the Committee determines.

5.4. Exercise Price. The Exercise Price of an Option will be determined by the Committee when the Option is granted; provided that: (a) the Exercise Price of an Option will be not less than one hundred percent (100%) of the Fair Market Value of the Shares on the date of grant and (b) the Exercise Price of any ISO granted to a Ten Percent Stockholder will not be less than one hundred ten percent (110%) of the Fair Market Value of the Shares on the date of grant. Payment for the Shares purchased may be made in accordance with Section 11 and the Award Agreement and in accordance with any procedures established by the Company.

5.5. Method of Exercise. Any Option granted hereunder will be vested and exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Committee and set forth in the Award Agreement. An Option may not be exercised for a fraction of a Share. An Option will be deemed exercised when the Company receives: (a) notice of exercise (in such form as the Committee may specify from time to time) from the person entitled to exercise the Option, and (b) full payment for the Shares with respect to which the Option is exercised (together with applicable withholding taxes). Full payment may consist of any consideration and method of payment authorized by the Committee and permitted by the Award Agreement and the Plan. Shares issued upon exercise of an Option will be issued in the name of the Participant. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder will exist with respect to the Shares, notwithstanding the exercise of the Option. The Company will issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 2.6 of the Plan. Exercising an Option in any manner will decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

5.6. Termination of Service. If the Participant’s Service terminates for any reason except for Cause or the Participant’s death or Disability, then the Participant may exercise such Participant’s Options only to the extent that such Options would have been exercisable by the Participant on the date Participant’s Service terminates no later than three (3) months after the date Participant’s Service terminates (or such shorter or longer time period as may be determined by the Committee, with any exercise beyond three (3) months after the date Participant’s employment terminates deemed to be the exercise of an NSO), but in any event no later than the expiration date of the Options.

   (a) Death. If the Participant’s Service terminates because of the Participant’s death (or the Participant dies within three (3) months after Participant’s Service terminates other than for Cause or because of the Participant’s Disability), then the Participant’s Options may be exercised only to the extent that such Options would have been exercisable by the Participant on the date Participant’s Service terminates and must be exercised by the Participant’s legal representative, or authorized assignee, no later than twelve (12) months after the date Participant’s Service terminates (or such shorter time period not less than six (6) months or longer time period as may be determined by the Committee), but in any event no later than the expiration date of the Options.
(b) Disability. If the Participant’s Service terminates because of the Participant’s Disability, then the Participant’s Options may be exercised only to the extent that such Options would have been exercisable by the Participant on the date Participant’s Service terminates and must be exercised by the Participant (or the Participant’s legal representative or authorized assignee) no later than twelve (12) months after the date Participant’s Service terminates (with any exercise beyond (a) three (3) months after the date Participant’s employment terminates when the termination of Service is for a Disability that is not a “permanent and total disability” as defined in Section 22(e)(3) of the Code, or (b) twelve (12) months after the date Participant’s employment terminates when the termination of Service is for a Disability that is a “permanent and total disability” as defined in Section 22(e)(3) of the Code, deemed to be exercise of an NSO), but in any event no later than the expiration date of the Options.

(c) Cause. If the Participant is terminated for Cause, then Participant’s Options shall expire on such Participant’s date of termination of Service, or at such later time and on such conditions as are determined by the Committee, but in any no event later than the expiration date of the Options. Unless otherwise provided in the Award Agreement, Cause shall have the meaning set forth in the Plan.

5.7. Limitations on Exercise. The Committee may specify a minimum number of Shares that may be purchased on any exercise of an Option, provided that such minimum number will not prevent any Participant from exercising the Option for the full number of Shares for which it is then exercisable.

5.8. Limitations on ISOs. With respect to Awards granted as ISOs, to the extent that the aggregate Fair Market Value of the Shares with respect to which such ISOs are exercisable for the first time by the Participant during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds one hundred thousand dollars ($100,000), such Options will be treated as NSOs. For purposes of this Section 5.8, ISOs will be taken into account in the order in which they were granted. The Fair Market Value of the Shares will be determined as of the time the Option with respect to such Shares is granted. In the event that the Code or the regulations promulgated thereunder are amended after the Effective Date to provide for a different limit on the Fair Market Value of Shares permitted to be subject to ISOs, such different limit will be automatically incorporated herein and will apply to any Options granted after the effective date of such amendment.

5.9. Modification, Extension or Renewal. The Committee may modify, extend or renew outstanding Options and authorize the grant of new Options in substitution therefor, provided that any such action may not, without the written consent of a Participant, impair any of such Participant’s rights under any Option previously granted. Any outstanding ISO that is modified, extended, renewed or otherwise altered will be treated in accordance with Section 424(h) of the Code. Subject to Section 18 of this Plan, by written notice to affected Participants, the Committee may reduce the Exercise Price of outstanding Options without the consent of such Participants; provided, however, that the Exercise Price may not be reduced below the Fair Market Value on the date the action is taken to reduce the Exercise Price.

5.10. No Disqualification. Notwithstanding any other provision in this Plan, no term of this Plan relating to ISOs will be interpreted, amended or altered, nor will any discretion or authority granted under this Plan be exercised, so as to disqualify this Plan under Section 422 of the Code or, without the consent of the Participant affected, to disqualify any ISO under Section 422 of the Code.

6. RESTRICTED STOCK AWARDS. A Restricted Stock Award is an offer by the Company to sell to an eligible Employee, Consultant, or Director of Shares that are subject to restrictions (“Restricted Stock”). The Committee will determine to whom an offer will be made, the number of Shares the Participant may purchase, the Purchase Price, the restrictions under which the Shares will be subject and all other terms and conditions of the Restricted Stock Award, subject to the Plan.
6.1. Restricted Stock Purchase Agreement. All purchases under a Restricted Stock Award will be evidenced by an Award Agreement. Except as may otherwise be provided in an Award Agreement, a Participant accepts a Restricted Stock Award by signing and delivering to the Company an Award Agreement with full payment of the Purchase Price, within thirty (30) days from the date the Award Agreement was delivered to the Participant. If the Participant does not accept such Award within thirty (30) days, then the offer of such Restricted Stock Award will terminate, unless the Committee determines otherwise.

6.2. Purchase Price. The Purchase Price for a Restricted Stock Award will be determined by the Committee and may be less than Fair Market Value on the date the Restricted Stock Award is granted. Payment of the Purchase Price must be made in accordance with Section 11 of the Plan, and the Award Agreement and in accordance with any procedures established by the Company.

6.3. Terms of Restricted Stock Awards. Restricted Stock Awards will be subject to such restrictions as the Committee may impose or are required by law. These restrictions may be based on completion of a specified number of years of service with the Company or upon completion of Performance Factors, if any, during any Performance Period as set out in advance in the Participant’s Award Agreement. Prior to the grant of a Restricted Stock Award, the Committee shall: (a) determine the nature, length and starting date of any Performance Period for the Restricted Stock Award; (b) select from among the Performance Factors to be used to measure performance goals, if any; and (c) determine the number of Shares that may be awarded to the Participant. Performance Periods may overlap and a Participant may participate simultaneously with respect to Restricted Stock Awards that are subject to different Performance Periods and having different performance goals and other criteria.

6.4. Termination of Service. Except as may be set forth in the Participant’s Award Agreement, vesting ceases on such date Participant’s Service terminates (unless determined otherwise by the Committee).

7. STOCK BONUS AWARDS. A Stock Bonus Award is an award to an eligible Employee, Consultant, or Director of Shares for Services to be rendered or for past Services already rendered to the Company or any Parent, Subsidiary or Affiliate. All Stock Bonus Awards shall be made pursuant to an Award Agreement. No payment from the Participant will be required for Shares awarded pursuant to a Stock Bonus Award.

7.1. Terms of Stock Bonus Awards. The Committee will determine the number of Shares to be awarded to the Participant under a Stock Bonus Award and any restrictions thereon. These restrictions may be based upon completion of a specified number of years of service with the Company or upon satisfaction of performance goals based on Performance Factors during any Performance Period as set out in advance in the Participant’s Stock Bonus Agreement. Prior to the grant of any Stock Bonus Award the Committee shall: (a) determine the nature, length and starting date of any Performance Period for the Stock Bonus Award; (b) select from among the Performance Factors to be used to measure performance goals; and (c) determine the number of Shares that may be awarded to the Participant. Performance Periods may overlap and a Participant may participate simultaneously with respect to Stock Bonus Awards that are subject to different Performance Periods and different performance goals and other criteria.

7.2. Form of Payment to Participant. Payment may be made in the form of cash, whole Shares, or a combination thereof, based on the Fair Market Value of the Shares earned under a Stock Bonus Award on the date of payment, as determined in the sole discretion of the Committee.

7.3. Termination of Service. Except as may be set forth in the Participant’s Award Agreement, vesting ceases on such date Participant’s Service terminates (unless determined otherwise by the Committee).
8. STOCK APPRECIATION RIGHTS. A Stock Appreciation Right (“SAR”) is an award to an eligible Employee, Consultant, or Director that may be settled in cash, or Shares (which may consist of Restricted Stock), having a value equal to (a) the difference between the Fair Market Value on the date of exercise over the Exercise Price multiplied by (b) the number of Shares with respect to which the SAR is being settled (subject to any maximum number of Shares that may be issuable as specified in an Award Agreement). All SARs shall be made pursuant to an Award Agreement.

8.1. Terms of SARs. The Committee will determine the terms of each SAR including, without limitation: (a) the number of Shares subject to the SAR; (b) the Exercise Price and the time or times during which the SAR may be settled; (c) the consideration to be distributed on settlement of the SAR; and (d) the effect of the Participant’s termination of Service on each SAR. The Exercise Price of the SAR will be determined by the Committee when the SAR is granted, and may not be less than Fair Market Value. A SAR may be awarded upon satisfaction of Performance Factors, if any, during any Performance Period as are set out in advance in the Participant’s individual Award Agreement. If the SAR is being earned upon the satisfaction of Performance Factors, then the Committee will: (x) determine the nature, length and starting date of any Performance Period for each SAR; and (y) select from among the Performance Factors to be used to measure the performance, if any. Performance Periods may overlap and Participants may participate simultaneously with respect to SARs that are subject to different Performance Factors and other criteria.

8.2. Exercise Period and Expiration Date. A SAR will be exercisable within the times or upon the occurrence of events determined by the Committee and set forth in the Award Agreement governing such SAR. The SAR Agreement shall set forth the expiration date; provided that no SAR will be exercisable after the expiration of ten (10) years from the date the SAR is granted. The Committee may also provide for SARs to become exercisable at one time or from time to time, periodically or otherwise (including, without limitation, upon the attainment during a Performance Period of performance goals based on Performance Factors), in such number of Shares or percentage of the Shares subject to the SAR as the Committee determines. Except as may be set forth in the Participant’s Award Agreement, vesting ceases on the date Participant’s Service terminates (unless determined otherwise by the Committee). Notwithstanding the foregoing, the rules of Section 5.6 also will apply to SARs.

8.3. Form of Settlement. Upon exercise of a SAR, a Participant will be entitled to receive payment from the Company in an amount determined by multiplying (a) the difference between the Fair Market Value of a Share on the date of exercise over the Exercise Price; times (b) the number of Shares with respect to which the SAR is exercised. At the discretion of the Committee, the payment from the Company for the SAR exercise may be in cash, in Shares of equivalent value, or in some combination thereof. The portion of a SAR being settled may be paid currently or on a deferred basis with such interest or dividend equivalent, if any, as the Committee determines, provided that the terms of the SAR and any deferral satisfy the requirements of Section 409A of the Code.

8.4. Termination of Service. Except as may be set forth in the Participant’s Award Agreement, vesting ceases on such date Participant’s Service terminates (unless determined otherwise by the Committee).

9. RESTRICTED STOCK UNITS. A Restricted Stock Unit (“RSU”) is an award to an eligible Employee, Consultant, or Director covering a number of Shares that may be settled in cash, or by issuance of those Shares (which may consist of Restricted Stock). All RSUs shall be made pursuant to an Award Agreement.

9.1. Terms of RSUs. The Committee will determine the terms of an RSU including, without limitation: (a) the number of Shares subject to the RSU; (b) the time or times during which the RSU may be settled; (c) the consideration to be distributed on settlement; and (d) the effect of the Participant’s termination of Service on each RSU; provided that no RSU shall have a term longer than ten (10) years. An RSU may be awarded upon satisfaction of such performance goals based on Performance Factors.
during any Performance Period as are set out in advance in the Participant’s Award Agreement. If the RSU is being earned upon satisfaction of Performance Factors, then the Committee will: (x) determine the nature, length and starting date of any Performance Period for the RSU; (y) select from among the Performance Factors to be used to measure the performance, if any; and (z) determine the number of Shares deemed subject to the RSU. Performance Periods may overlap and participants may participate simultaneously with respect to RSUs that are subject to different Performance Periods and different performance goals and other criteria.

9.2. Form and Timing of Settlement. Payment of earned RSUs shall be made as soon as practicable after the date(s) determined by the Committee and set forth in the Award Agreement. The Committee, in its sole discretion, may settle earned RSUs in cash, Shares, or a combination of both. The Committee may also permit a Participant to defer payment under a RSU to a date or dates after the RSU is earned provided that the terms of the RSU and any deferral satisfy the requirements of Section 409A of the Code.

9.3. Termination of Service. Except as may be set forth in the Participant’s Award Agreement, vesting ceases on such date Participant’s Service terminates (unless determined otherwise by the Committee).

10. PERFORMANCE AWARDS. A Performance Award is an award to an eligible Employee, Consultant, or Director of the Company or any Parent, Subsidiary or Affiliate of a cash bonus or an award of Performance Shares denominated in Shares that may be settled in cash, or by issuance of those Shares (which may consist of Restricted Stock). Grants of Performance Awards shall be made pursuant to an Award Agreement.

10.1. Types of Performance Awards. Performance Awards shall include Performance Shares, Performance Units, and cash-based Awards as set forth in Sections 10.1(a), 10.1(b), and 10.1(c) below.

(a) Performance Shares. The Committee may grant Awards of Performance Shares, designate the Participants to whom Performance Shares are to be awarded and determine the number of Performance Shares and the terms and conditions of each such Award. Performance Shares shall consist of a unit valued by reference to a designated number of shares of Common Stock, the value of which may be paid to the Participant by delivery of shares of Common Stock or, if set forth in the instrument evidencing the Award, of such property as the Committee shall determine, including, without limitation, cash, shares of Common Stock, other property, or any combination thereof, upon the attainment of performance goals, as established by the Committee, and other terms and conditions specified by the Committee. The amount to be paid under an Award of Performance Shares may be adjusted on the basis of such further consideration as the Committee shall determine in its sole discretion.

(b) Performance Units. The Committee may grant Awards of Performance Units, designate the Participants to whom Performance Units are to be awarded and determine the number of Performance Units and the terms and conditions of each such Award. Performance Units shall consist of a unit valued by reference to a designated amount of property other than shares of Common Stock, which value may be paid to the Participant by delivery of such property as the Committee shall determine, including, without limitation, cash, shares of Common Stock, other property, or any combination thereof, upon the attainment of performance goals, as established by the Committee, and other terms and conditions specified by the Committee.

(c) Cash-Settled Performance Awards. The Committee may also grant cash-settled Performance Awards to Participants under the terms of this Plan. Such awards will be based on the attainment of performance goals using the Performance Criteria within this Plan that are established by the Committee for the relevant performance period.
10.2. Terms of Performance Awards. The Committee will determine, and each Award Agreement shall set forth, the terms of each Performance Award including, without limitation: (a) the amount of any cash bonus, (b) the number of Shares deemed subject to an award of Performance Shares; (c) the Performance Factors and Performance Period that shall determine the time and extent to which each award of Performance Shares shall be settled; (d) the consideration to be distributed on settlement, and (e) the effect of the Participant’s termination of Service on each Performance Award. In establishing Performance Factors and the Performance Period the Committee will: (x) determine the nature, length and starting date of any Performance Period; (y) select from among the Performance Factors to be used; and (z) determine the number of Shares deemed subject to the award of Performance Shares. Prior to settlement the Committee shall determine the extent to which Performance Awards have been earned. Performance Periods may overlap and Participants may participate simultaneously with respect to Performance Awards that are subject to different Performance Periods and different performance goals and other criteria. No Participant will be eligible to receive more than $10,000,000 in Performance Awards in any calendar year under this Plan.

10.3. Termination of Service. Except as may be set forth in the Participant’s Award Agreement, vesting ceases on the date Participant’s Service terminates (unless determined otherwise by the Committee).

11. PAYMENT FOR SHARE PURCHASES. Payment from a Participant for Shares purchased pursuant to this Plan may be made in cash or by check or, where approved for the Participant by the Committee and where permitted by law (and to the extent not otherwise set forth in the applicable Award Agreement):

(a) by cancellation of indebtedness of the Company to the Participant;

(b) by surrender of shares of the Company’s Class A common stock or Class B common stock by the Participant that have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Award will be exercised or settled;

(c) by waiver of compensation due or accrued to the Participant for services rendered or to be rendered to the Company or a Parent or Subsidiary of the Company;

(d) by consideration received by the Company pursuant to a broker-assisted or other form of cashless exercise program implemented by the Company in connection with the Plan;

(e) by any combination of the foregoing; or

(f) by any other method of payment as is permitted by applicable law.

12. GRANTS TO NON-EMPLOYEE DIRECTORS. Non-Employee Directors are eligible to receive any type of Award offered under this Plan except ISOs. Awards pursuant to this Section 12 may be automatically made pursuant to policy adopted by the Board, or made from time to time as determined in the discretion of the Board. The aggregate number of Shares subject to Awards granted to a Non-Employee Director pursuant to this Section 12 in any calendar year shall not exceed 1,000,000.

12.1. Eligibility. Awards pursuant to this Section 12 shall be granted only to Non-Employee Directors. A Non-Employee Director who is elected or re-elected as a member of the Board will be eligible to receive an Award under this Section 12.

12.2. Vesting, Exercisability and Settlement. Except as set forth in Section 21, Awards shall vest, become exercisable and be settled as determined by the Board. With respect to Options and SARs, the exercise price granted to Non-Employee Directors shall not be less than the Fair Market Value of the Shares at the time that such Option or SAR is granted.
12.3. Election to receive Awards in Lieu of Cash. A Non-Employee Director may elect to receive his or her annual retainer payments and/or meeting fees from the Company in the form of cash or Awards or a combination thereof, as determined by the Committee. Such Awards shall be issued under the Plan. An election under this Section 12.3 shall be filed with the Company on the form prescribed by the Company.

13. WITHHOLDING TAXES

13.1. Withholding Generally. Whenever Shares are to be issued in satisfaction of Awards granted under this Plan or a tax event occurs, the Company may require the Participant to remit to the Company, or to the Parent, Subsidiary or applicable Affiliate employing the Participant, an amount sufficient to satisfy applicable U.S. federal, state, local and international withholding tax requirements or any other tax or social insurance liability legally due from the Participant prior to the delivery of Shares pursuant to exercise or settlement of any Award. Whenever payments in satisfaction of Awards granted under this Plan are to be made in cash, such payment will be net of an amount sufficient to satisfy applicable U.S. federal, state, local and international withholding tax or social insurance requirements or any other tax liability legally due from the Participant. The Fair Market Value of the Shares will be determined as of the date that the taxes are required to be withheld and such Shares shall be valued based on the value of the actual trade or, if there is none, the Fair Market Value of the Shares as of the previous trading day.

13.2. Stock Withholding. The Committee, or its delegate(s), as permitted by applicable law, in its sole discretion and pursuant to such procedures as it may specify from time to time and to limitations of local law, may require or permit a Participant to satisfy such tax withholding obligation or any other tax liability legally due from the Participant, in whole or in part by (without limitation) (a) paying cash, (b) electing to have the Company withhold otherwise deliverable cash or Shares having a Fair Market Value equal to the minimum statutory amount required to be withheld, (c) delivering to the Company already-owned shares of the Company’s Class A common stock or Class B common stock having a Fair Market Value equal to the minimum amount required to be withheld or (d) withholding from proceeds of the sale of otherwise deliverable Shares acquired pursuant to an Award either through a voluntary sale or through a mandatory sale arranged by the Company for the minimum amount required to be withheld.

14. TRANSFERABILITY

14.1. Transfer Generally. Unless determined otherwise by the Committee or pursuant to Section 14.2, an Award may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution. If the Committee makes an Award transferable, including, without limitation, by instrument to an inter vivos or testamentary trust in which the Awards are to be passed to beneficiaries upon the death of the trustor (settlor) or by gift or by domestic relations order to a Permitted Transferee, such Award will contain such additional terms and conditions as the Committee deems appropriate. All Awards shall be exercisable: (a) during the Participant’s lifetime only by (i) the Participant, or (ii) the Participant’s guardian or legal representative; (b) after the Participant’s death, by the legal representative of the Participant’s heirs or legatees; and (c) in the case of all awards except ISOs, by a Permitted Transferee.

14.2. Award Transfer Program. Notwithstanding any contrary provision of the Plan, the Committee shall have all discretion and authority to determine and implement the terms and conditions of any Award Transfer Program instituted pursuant to this Section 14.2 and shall have the authority to amend the terms of any Award participating, or otherwise eligible to participate in, the Award Transfer Program, including (but not limited to) the authority to (a) amend (including to extend) the expiration date, post-termination exercise period and/or forfeiture conditions of any such Award, (b) amend or remove any provisions of the Award relating to the Award holder’s continued Service to the Company or its Parent, Subsidiary, or Affiliate, (c) amend the permissible payment methods with respect to the exercise or purchase of any such Award, (d) amend the adjustments to be implemented in the event of
changes in the capitalization and other similar events with respect to such Award, and (e) make such other changes to the terms of such Award as the Committee deems necessary or appropriate in its sole discretion. Notwithstanding anything to the contrary in the Plan, in no event will the Committee have the right to determine and implement the terms and conditions of any Award Transfer Program without stockholder approval.

15. PRIVILEGES OF STOCK OWNERSHIP: RESTRICTIONS ON SHARES

15.1. Voting and Dividends. No Participant will have any of the rights of a stockholder with respect to any Shares until the Shares are issued to the Participant, except for any dividend equivalent rights permitted by an applicable Award Agreement ("Dividend Equivalent Rights"). After Shares are issued to the Participant, the Participant will be a stockholder and have all the rights of a stockholder with respect to such Shares, including the right to vote and receive all dividends or other distributions made or paid with respect to such Shares; provided, that if such Shares are Restricted Stock, then any new, additional or different securities the Participant may become entitled to receive with respect to such Shares by virtue of a stock dividend, stock split or any other change in the corporate or capital structure of the Company will be subject to the same restrictions as the Restricted Stock; provided, further, that the Participant will have no right to retain such stock dividends or stock distributions with respect to Shares that are repurchased at the Participant’s Purchase Price or Exercise Price, as the case may be, pursuant to Section 15.2. However, the Committee, in its discretion, may provide in the Award Agreement evidencing any Award that the Participant shall be entitled to Dividend Equivalent Rights with respect to the payment of cash dividends on Shares underlying an Award during the period beginning on the date the Award is granted and ending, with respect to each Share subject to the Award, on the earlier of the date on which the Award is exercised or settled or the date on which it is forfeited. Such Dividend Equivalent Rights, if any, shall be credited to the Participant in the form of additional whole Shares as of the date of payment of such cash dividends on Shares.

15.2. Restrictions on Shares. At the discretion of the Committee, the Company may reserve to itself and/or its assignee(s) a right to repurchase (a "Right of Repurchase") a portion of any or all Unvested Shares held by a Participant following such Participant’s termination of Service at any time within ninety (90) days (or such longer or shorter time determined by the Committee) after the later of the date the Participant’s Service terminates and the date the Participant purchases Shares under this Plan, for cash and/or cancellation of purchase money indebtedness, at the Participant’s Purchase Price or Exercise Price, as the case may be.

16. CERTIFICATES. All Shares or other securities whether or not certificated, delivered under this Plan will be subject to such stock transfer orders, legends and other restrictions as the Committee may deem necessary or advisable, including restrictions under any applicable U.S. federal, state or foreign securities law, or any rules, regulations and other requirements of the SEC or any stock exchange or automated quotation system upon which the Shares may be listed or quoted and any non-U.S. exchange controls or securities law restrictions to which the Shares are subject.

17. ESCROW; PLEDGE OF SHARES. To enforce any restrictions on a Participant’s Shares, the Committee may require the Participant to deposit all certificates representing Shares, together with stock powers or other instruments of transfer approved by the Committee, appropriately endorsed in blank, with the Company or an agent designated by the Company to hold in escrow until such restrictions have lapsed or terminated, and the Committee may cause a legend or legends referencing such restrictions to be placed on the certificates. Any Participant who is permitted to execute a promissory note as partial or full consideration for the purchase of Shares under this Plan will be required to pledge and deposit with the Company all or part of the Shares so purchased as collateral to secure the payment of the Participant’s obligation to the Company under the promissory note; provided, however, that the Committee may require or accept other or additional forms of collateral to secure the payment of such obligation and, in any event, the Company will have full recourse against the Participant under the promissory note notwithstanding any pledge of the Participant’s Shares or other collateral. In connection with any pledge
of the Shares, the Participant will be required to execute and deliver a written pledge agreement in such form as the Committee will from time to time approve. The Shares purchased with the promissory note may be released from the pledge on a pro rata basis as the promissory note is paid.

18. REPRICING; EXCHANGE AND BUYOUT OF AWARDS. Without prior stockholder approval, the Committee may (a) reprice Options or SARs (and where such repricing is a reduction in the Exercise Price of outstanding Options or SARs, the consent of the affected Participants is not required provided written notice is provided to them, notwithstanding any adverse tax consequences to them arising from the repricing), and (b) with the consent of the respective Participants (unless not required pursuant to Section 5.9 of the Plan), pay cash or issue new Awards in exchange for the surrender and cancellation of any, or all, outstanding Awards.

19. SECURITIES LAW AND OTHER REGULATORY COMPLIANCE. An Award will not be effective unless such Award is in compliance with all applicable U.S. and foreign federal and state securities and exchange control laws, rules and regulations of any governmental body, and the requirements of any stock exchange or automated quotation system upon which the Shares may then be listed or quoted, as they are in effect on the date of grant of the Award and also on the date of exercise or other issuance. Notwithstanding any other provision in this Plan, the Company will have no obligation to issue or deliver certificates for Shares under this Plan prior to: (a) obtaining any approvals from governmental agencies that the Company determines are necessary or advisable; and/or (b) completion of any registration or other qualification of such Shares under any state or federal or foreign law or ruling of any governmental body that the Company determines to be necessary or advisable. The Company will be under no obligation to register the Shares with the SEC or to effect compliance with the registration, qualification or listing requirements of any foreign or state securities laws, exchange control laws, stock exchange or automated quotation system, and the Company will have no liability for any inability or failure to do so.

20. NO OBLIGATION TO EMPLOY. Nothing in this Plan or any Award granted under this Plan will confer or be deemed to confer on any Participant any right to continue in the employ of, or to continue any other relationship with, the Company or any Parent, Subsidiary or Affiliate or limit in any way the right of the Company or any Parent, Subsidiary or Affiliate to terminate Participant’s employment or other relationship at any time.

21. CORPORATE TRANSACTIONS.

21.1. Assumption or Replacement of Awards by Successor. In the event that the Company is subject to a Corporate Transaction, outstanding Awards acquired under the Plan shall be subject to the agreement evidencing the Corporate Transaction, which need not treat all outstanding Awards in an identical manner. Such agreement, without the Participant’s consent, shall provide for one or more of the following with respect to all outstanding Awards as of the effective date of such Corporate Transaction:

(a) The continuation of an outstanding Award by the Company (if the Company is the successor entity).

(b) The assumption of an outstanding Award by the successor or acquiring entity (if any) of such Corporate Transaction (or by its parents, if any), which assumption, will be binding on all selected Participants; provided that the exercise price and the number and nature of shares issuable upon exercise of any such option or stock appreciation right, or any award that is subject to Section 409A of the Code, will be adjusted appropriately pursuant to Section 424(a) of the Code.

(c) The substitution by the successor or acquiring entity in such Corporate Transaction (or by its parents, if any) of equivalent awards with substantially the same terms for such outstanding Awards (except that the exercise price and the number and nature of shares issuable upon exercise of any such option or stock appreciation right, or any award that is subject to Section 409A of the Code, will be adjusted appropriately pursuant to Section 424(a) of the Code).
(d) The full or partial acceleration of exercisability or vesting and accelerated expiration of an outstanding Award and lapse of the Company’s right to repurchase or re-acquire shares acquired under an Award or lapse of forfeiture rights with respect to shares acquired under an Award.

(e) The settlement of the full value of such outstanding Award (whether or not then vested or exercisable) in cash, cash equivalents, or securities of the successor entity (or its parent, if any) with a Fair Market Value equal to the required amount, followed by the cancellation of such Awards; provided however, that such Award may be cancelled if such Award has no value, as determined by the Committee, in its discretion. Subject to Section 409A of the Code, such payment may be made in installments and may be deferred until the date or dates the Award would have become exercisable or vested. Such payment may be subject to vesting based on the Participant’s continued service, provided that the vesting schedule shall not be less favorable to the Participant than the schedule under which the Award would have become vested or exercisable. For purposes of this Section 21.1(e), the Fair Market Value of any security shall be determined without regard to any vesting conditions that may apply to such security.

(f) The cancellation of outstanding Awards in exchange for no consideration.

The Board shall have full power and authority to assign the Company’s right to repurchase or re-acquire or forfeiture rights to such successor or acquiring corporation. In addition, in the event such successor or acquiring corporation refuses to assume, convert, replace or substitute Awards, as provided above, pursuant to a Corporate Transaction, the Committee will notify the Participant in writing or electronically that such Award will be exercisable for a period of time determined by the Committee in its sole discretion, and such Award will terminate upon the expiration of such period. Awards need not be treated similarly in a Corporate Transaction.

21.2. Assumption of Awards by the Company. The Company, from time to time, also may substitute or assume outstanding awards granted by another company, whether in connection with an acquisition of such other company or otherwise, by either; (a) granting an Award under this Plan in substitution of such other company’s award; or (b) assuming such award as if it had been granted under this Plan if the terms of such assumed award could be applied to an Award granted under this Plan. Such substitution or assumption will be permissible if the holder of the substituted or assumed award would have been eligible to be granted an Award under this Plan if the other company had applied the rules of this Plan to such grant. In the event the Company assumes an award granted by another company, the terms and conditions of such award will remain unchanged (except that the Purchase Price or the Exercise Price, as the case may be, and the number and nature of Shares issuable upon exercise or settlement of any such Award will be adjusted appropriately pursuant to Section 424(a) of the Code). In the event the Company elects to grant a new Option in substitution rather than assuming an existing option, such new Option may be granted with a similarly adjusted Exercise Price. Substitute Awards shall not be credited toward the number of Shares authorized for grant under the Plan or authorized for grant to a Participant in a calendar year.

21.3. Non-Employee Directors’ Awards. Notwithstanding any provision to the contrary herein, in the event of a Corporate Transaction, the vesting of all Awards granted to Non-Employee Directors shall accelerate and such Awards shall become exercisable (as applicable) in full prior to the consummation of such event at such times and on such conditions as the Committee determines.
22. ADOPTION AND STOCKHOLDER APPROVAL. This Plan shall be submitted for the approval of the Company’s stockholders, consistent with applicable laws, within twelve (12) months before or after the date this Plan is adopted by the Board.

23. TERM OF PLAN/GOVERNING LAW. Unless earlier terminated as provided herein, this Plan will become effective on the Effective Date and will terminate ten (10) years from the date this Plan is adopted by the Board. This Plan and all Awards granted hereunder shall be governed by and construed in accordance with the laws of the State of Delaware (excluding its conflict of law rules).

24. AMENDMENT OR TERMINATION OF PLAN. The Board may at any time terminate or amend this Plan in any respect, including, without limitation, amendment of any form of Award Agreement or instrument to be executed pursuant to this Plan; provided, however, that the Board will not, without the approval of the stockholders of the Company, amend this Plan in any manner that requires such stockholder approval; provided further, that a Participant’s Award shall be governed by the version of this Plan then in effect at the time such Award was granted.

25. NONEXCLUSIVITY OF THE PLAN. Neither the adoption of this Plan by the Board, the submission of this Plan to the stockholders of the Company for approval, nor any provision of this Plan will be construed as creating any limitations on the power of the Board to adopt such additional compensation arrangements as it may deem desirable, including, without limitation, the granting of stock awards and bonuses otherwise than under this Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

26. INSIDER TRADING POLICY. Each Participant who receives an Award shall comply with any policy adopted by the Company from time to time covering transactions in the Company’s securities by Employees, officers and/or directors of the Company.

27. ALL AWARDS SUBJECT TO COMPANY CLAWBACK OR RECOUPMENT POLICY. All Awards shall be subject to clawback or recoupment pursuant to any compensation clawback or recoupment policy adopted by the Board or required by law during the term of Participant’s employment or other service with the Company that is applicable to executive officers, employees, directors or other service providers of the Company, and in addition to any other remedies available under such policy and applicable law, may require the cancelation of outstanding Awards and the recoupment of any gains realized with respect to Awards.

28. DEFINITIONS. As used in this Plan, and except as elsewhere defined herein, the following terms will have the following meanings:

28.1. "Affiliate" means any person or entity that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the Company, including any general partner, managing member, officer or director of the Company, in each case as of the date on which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person or entity, whether through the ownership of voting securities or by contract or otherwise.

28.2. “Award” means any award under the Plan, including any Option, Restricted Stock, Stock Bonus, Stock Appreciation Right, Restricted Stock Unit or award of Performance Shares.

28.3. “Award Agreement” means, with respect to each Award, the written or electronic agreement between the Company and the Participant setting forth the terms and conditions of the Award, and country-specific appendix thereto for grants to non-U.S. Participants, which shall be in substantially a form (which need not be the same for each Participant) that the Committee (or in the case of Award agreements that are not used for Insiders, the Committee’s delegate(s)) has from time to time approved, and will comply with and be subject to the terms and conditions of this Plan.
28.4. “Award Transfer Program” means any program instituted by the Committee which would permit Participants the opportunity to transfer any outstanding Awards to a financial institution or other person or entity approved by the Committee.

28.5. “Board” means the Board of Directors of the Company.

28.6. “Cause” means (a) Participant’s willful failure substantially to perform his or her duties and responsibilities to the Company or deliberate violation of a Company policy; (b) Participant’s commission of any act of fraud, embezzlement, dishonesty or any other willful misconduct that has caused or is reasonably expected to result in material injury to the Company; (c) unauthorized use or disclosure by Participant of any proprietary information or trade secrets of the Company or any other party to whom the Participant owes an obligation of nondisclosure as a result of his or her relationship with the Company; or (d) Participant’s willful breach of any of his or her obligations under any written agreement or covenant with the Company. The determination as to whether a Participant is being terminated for Cause shall be made in good faith by the Company and shall be final and binding on the Participant. The foregoing definition does not in any way limit the Company’s ability to terminate a Participant’s employment or consulting relationship at any time as provided in Section 20 above, and the term “Company” will be interpreted to include any Parent, Subsidiary or Affiliate, as appropriate. Notwithstanding the foregoing, the foregoing definition of “Cause” may, in part or in whole, be modified or replaced in each individual employment agreement or Award Agreement with any Participant, provided that such document supersedes the definition provided in this Section 28.6.


28.8. “Committee” means the Compensation Committee of the Board or those persons to whom administration of the Plan, or part of the Plan, has been delegated as permitted by law.


28.11. “Consultant” means any person, including an advisor or independent contractor, engaged by the Company or a Parent, Subsidiary or Affiliate to render services to such entity.

28.12. “Corporate Transaction” means the occurrence of any of the following events: (a) any “Person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the “beneficial owner” (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company’s then-outstanding voting securities; provided, however, that for purposes of this subclause (a) the acquisition of additional securities by any one Person who is considered to own more than fifty percent (50%) of the total voting power of the securities of the Company will not be considered a Corporate Transaction; (b) the consummation of the sale or disposition by the Company of all or substantially all of the Company’s assets; (c) the consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation; (d) any other transaction which qualifies as a “corporate transaction” under Section 424(a) of the Code wherein the stockholders of the Company give up all of their equity interest in the Company (except for the
acquisition, sale or transfer of all or substantially all of the outstanding shares of the Company) or (e) a change in the effective control of the Company that occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by members of the Board whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purpose of this subclause (e), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Corporate Transaction. For purposes of this definition, Persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company. Notwithstanding the foregoing, to the extent that any amount constituting deferred compensation (as defined in Section 409A of the Code) would become payable under this Plan by reason of a Corporate Transaction, such amount shall become payable only if the event constituting a Corporate Transaction would also qualify as a change in ownership or effective control of the Company or a change in the ownership of a substantial portion of the assets of the Company, each as defined within the meaning of Code Section 409A, as it has been and may be amended from time to time, and any proposed or final Treasury Regulations and IRS guidance that has been promulgated or may be promulgated thereunder from time to time.

28.13. “Director” means a member of the Board.

28.14. “Disability” means in the case of incentive stock options, total and permanent disability as defined in Section 22(e)(3) of the Code and in the case of other Awards, that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

28.15. “Effective Date” means the day immediately prior to the date of the underwritten initial public offering of the Company’s Common Stock pursuant to a registration statement that is declared effective by the SEC.

28.16. “Employee” means any person, including Officers and Directors, employed by the Company or any Parent, Subsidiary or Affiliate. Neither service as a Director nor payment of a director’s fee by the Company will be sufficient to constitute “employment” by the Company.


28.18. “Exchange Program” means a program pursuant to which (a) outstanding Awards are surrendered, cancelled or exchanged for cash, the same type of Award or a different Award (or combination thereof) or (b) the exercise price of an outstanding Award is increased or reduced.

28.19. “Exercise Price” means, with respect to an Option, the price at which a holder may purchase the Shares issuable upon exercise of an Option and with respect to a SAR, the price at which the SAR is granted to the holder thereof.

28.20. “Fair Market Value” means, as of any date, the value of a share of the Company’s Common Stock determined as follows:

(a) if such Common Stock is publicly traded and is then listed on a national securities exchange, its closing price on the date of determination on the principal national securities exchange on which the Common Stock is listed or admitted to trading as reported in The Wall Street Journal or such other source as the Committee deems reliable;

(b) if such Common Stock is publicly traded but is neither listed nor admitted to trading on a national securities exchange, the average of the closing bid and asked prices on the date of determination as reported in The Wall Street Journal or such other source as the Committee deems reliable;
(c) in the case of an Option or SAR grant made on the Effective Date, the price per share at which shares of the Company’s Common Stock are initially offered for sale to the public by the Company’s underwriters in the initial public offering of the Company’s Common Stock pursuant to a registration statement filed with the SEC under the Securities Act; or

(d) if none of the foregoing is applicable, by the Board or the Committee in good faith.

28.21. “Insider” means an officer or director of the Company or any other person whose transactions in the Company’s Common Stock are subject to Section 16 of the Exchange Act.

28.22. “IRS” means the United States Internal Revenue Service.

28.23. “Non-Employee Director” means a Director who is not an Employee of the Company or any Parent, Subsidiary or Affiliate.

28.24. “Option” means an award of an option to purchase Shares pursuant to Section 5.

28.25. “Parent” means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if each of such corporations other than the Company owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

28.26. “Participant” means a person who holds an Award under this Plan.

28.27. “Performance Award” means cash or stock granted pursuant to Section 10 or Section 12 of the Plan.

28.28. “Performance Factors” means any of the factors selected by the Committee and specified in an Award Agreement, from among the following objective measures, either individually, alternatively or in any combination, applied to the Company as a whole or any business unit or Subsidiary, either individually, alternatively, or in any combination, on a GAAP or non-GAAP basis, and measured, to the extent applicable on an absolute basis or relative to a pre-established target, to determine whether the performance goals established by the Committee with respect to applicable Awards have been satisfied:

(a) Profit Before Tax;

(b) Sales;

(c) Expenses;

(d) Billings;

(e) Revenue;

(f) Net revenue;

(g) Earnings (which may include earnings before interest and taxes, earnings before taxes, net earnings, stock-based compensation expenses, depreciation and amortization);
(h) Operating income;
(i) Operating margin;
(j) Operating profit;
(k) Controllable operating profit, or net operating profit;
(l) Net Profit;
(m) Gross margin;
(n) Operating expenses or operating expenses as a percentage of revenue;
(o) Net income;
(p) Earnings per share;
(q) Total stockholder return;
(r) Market share;
(s) Return on assets or net assets;
(t) The Company’s stock price;
(u) Growth in stockholder value relative to a pre-determined index;
(v) Return on equity;
(w) Return on invested capital;
(x) Cash Flow (including free cash flow or operating cash flows)
(y) Balance of cash, cash equivalents and marketable securities;
(z) Cash conversion cycle;
(aa) Economic value added;
(bb) Individual confidential business objectives;
(cc) Contract awards or backlog;
(dd) Overhead or other expense reduction;
(ee) Credit rating;
(ff) Completion of an identified special project;
(gg) Completion of a joint venture or other corporate transaction;
(hh) Strategic plan development and implementation;
(ii) Succession plan development and implementation;
(jj) Improvement in workforce diversity;
(kk) Employee satisfaction;
(ll) Employee retention;
(mm) Customer indicators and satisfaction;
(nn) New product invention or innovation;
(oo) Research and development expenses;
(pp) Attainment of research and development milestones;
(qq) Improvements in productivity;
(rr) Bookings;
(ss) Working-capital targets and changes in working capital; and
(tt) Attainment of objective operating goals and employee metrics.

The Committee may, in recognition of unusual or non-recurring items such as acquisition-related activities or changes in applicable accounting rules, provide for one or more equitable adjustments (based on objective standards) to the Performance Factors to preserve the Committee’s original intent regarding the Performance Factors at the time of the initial award grant. It is within the sole discretion of the Committee to make or not make any such equitable adjustments.

28.29. “Performance Period” means one or more periods of time, which may be of varying and overlapping durations, as the Committee may select, over which the attainment of one or more Performance Factors will be measured for the purpose of determining a Participant’s right to, and the payment of, a Performance Award.

28.30. “Performance Share” means an Award granted pursuant to Section 10 or Section 12 of the Plan, the payment of which is contingent upon achieving certain performance goals established by the Committee.

28.31. “Performance Unit” means a right granted to a Participant pursuant to Section 10 or Section 12, to receive Stock, the payment of which is contingent upon achieving certain performance goals established by the Committee.

28.32. “Permitted Transferee” means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law (including adoptive relationships) of the Employee, any person sharing the Employee’s household (other than a tenant or employee), a trust in which these persons (or the Employee) have more than 50% of the beneficial interest, a foundation in which these persons (or the Employee) control the management of assets, and any other entity in which these persons (or the Employee) own more than 50% of the voting interests.

28.33. “Plan” means this Fitbit, Inc. 2015 Equity Incentive Plan.

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28.34. “Purchase Price” means the price to be paid for Shares acquired under the Plan, other than Shares acquired upon exercise of an Option or SAR.

28.35. “Restricted Stock Award” means an award of Shares pursuant to Section 6 or Section 12 of the Plan, or issued pursuant to the early exercise of an Option.

28.36. “Restricted Stock Unit” means an Award granted pursuant to Section 9 or Section 12 of the Plan.


28.39. “Service” shall mean service as an Employee, Consultant, Director or Non-Employee Director, to the Company or a Parent, Subsidiary or Affiliate, subject to such further limitations as may be set forth in the Plan or the applicable Award Agreement. An Employee will not be deemed to have ceased to provide Service in the case of (a) sick leave, (b) military leave, or (c) any other leave of absence approved by the Company; provided, that such leave is for a period of not more than 90 days (x) unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or (y) unless provided otherwise pursuant to formal policy adopted from time to time by the Company’s Board and issued and promulgated to employees in writing. In the case of any Employee on an approved leave of absence or a reduction in hours worked (for illustrative purposes only, a change in schedule from that of full-time to part-time), the Committee may make such provisions respecting suspension of or modification to vesting of the Award while on leave from the employ of the Company or a Parent, Subsidiary or Affiliate or during such change in working hours as it may deem appropriate, except that in no event may an Award be exercised after the expiration of the term set forth in the applicable Award Agreement. In the event of military leave, if required by applicable laws, vesting shall continue for the longest period that vesting continues under any other statutory or Company approved leave of absence and, upon a Participant’s returning from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given vesting credit with respect to Awards to the same extent as would have applied had the Participant continued to provide Service to the Company throughout the leave on the same terms as he or she was providing Service immediately prior to such leave. An employee shall have terminated employment as of the date he or she ceases to provide Service (regardless of whether the termination is in breach of local employment laws or is later found to be invalid) and employment shall not be extended by any notice period or garden leave mandated by local law, provided however, that a change in status from an employee to a consultant or advisor shall not terminate the service provider’s Service, unless determined by the Committee, in its discretion. The Committee will have sole discretion to determine whether a Participant has ceased to provide Service and the effective date on which the Participant ceased to provide Service.


28.41. “Stock Appreciation Right” means an Award granted pursuant to Section 8 or Section 12 of the Plan.

28.42. “Stock Bonus” means an Award granted pursuant to Section 7 or Section 12 of the Plan.

28.43. “Subsidiary” means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.
28.44. "Treasury Regulations" means regulations promulgated by the United States Treasury Department.

28.45. "Unvested Shares" means Shares that have not yet vested or are subject to a right of repurchase in favor of the Company (or any successor thereto).
GLOBAL NOTICE OF RESTRICTED STOCK UNIT AWARD

FITBIT, INC.
2015 EQUITY INCENTIVE PLAN
GRANT NUMBER:

Unless otherwise defined herein, the terms defined in the Fitbit, Inc. (the “Company”) 2015 Equity Incentive Plan (the “Plan”) shall have the same meanings in this Global Notice of Restricted Stock Unit Award (the “Notice”) and the attached Award Agreement (Global Restricted Stock Unit Agreement, including any special terms and conditions for your country set forth in the appendix attached thereto (collectively, the “RSU Agreement”)). You (“you”) have been granted an award of Restricted Stock Units (“RSUs”) under the Plan subject to the terms and conditions of the Plan, this Notice and the attached RSU Agreement.

Name: ____________________________
Address: ____________________________
Number of RSUs: ____________________________
Date of Grant: ____________________________
Vesting Commencement Date: ____________________________
Expiration Date: The earlier to occur of: (a) the settlement of all vested RSUs granted hereunder and (b) the tenth anniversary of the Date of Grant. The RSUs expire earlier if your Service terminates earlier, as described in the RSU Agreement.
Vesting Schedule: Sample vesting language: [25% of the total number of RSUs will vest on the twelve month anniversary of the Vesting Commencement Date and 25% of the total number of RSUs will vest on each annual anniversary thereafter so long as your Service continues.][Note: actual vesting language to match vesting schedule approved by the Board or Committee]
Additional Terms: □ If this box is checked, the additional terms and conditions set forth on Attachment 1 hereto (as executed by the Company) are applicable and are incorporated herein by reference. No document need be attached as Attachment 1 if the box is not checked.

You acknowledge that the vesting of the RSUs pursuant to this Notice is earned only by continuing Service. By accepting this award, you and the Company agree that this award is granted under and governed by the terms and conditions of the Plan, this Notice and the RSU Agreement. By accepting this award of RSUs, you consent to the electronic delivery and acceptance as further set forth in the RSU Agreement.

PARTICIPANT    FITBIT, INC.
Signature: ____________________________ By: ____________________________
Print Name: ____________________________ Its: __________________________________________
You have been granted Restricted Stock Units ("RSUs") by Fitbit, Inc. (the "Company") subject to the terms, restrictions and conditions of the Plan, the Global Notice of Restricted Stock Unit Award (the "Notice") and this Global Restricted Stock Unit Agreement, including any special terms and conditions for your country set forth in the appendix attached hereto (the "Appendix") (collectively, this "RSU Agreement").

1. Nature of Grant. In accepting this award of RSUs, you acknowledge, understand and agree that:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

(b) the grant of the RSUs is voluntary and occasional and does not create any contractual or other right to receive future awards of RSUs, or benefits in lieu of RSUs, even if RSUs have been granted in the past;

(c) all decisions with respect to future RSUs or other grants, if any, will be at the sole discretion of the Company;

(d) you are voluntarily participating in the Plan;

(e) the RSUs and the Shares subject to the RSUs, and the income and value of same, are not intended to replace any pension rights or compensation;

(f) the RSUs and the Shares subject to the RSUs, and the income and value of same, are not part of normal or expected compensation for purposes of calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments;

(g) unless otherwise agreed with the Company, the RSUs and any Shares acquired under the Plan, and the income and value of same, are not granted as consideration for, or in connection with, any service you may provide as a director of the Company, or a Parent or Subsidiary of the Company;

(h) the future value of the underlying Shares is unknown, indeterminable and cannot be predicted with certainty;

(i) no claim or entitlement to compensation or damages shall arise from forfeiture of the RSUs resulting from the termination of your Service (for any reason whatsoever whether or not later found to be invalid or in breach of labor laws in the jurisdiction where you are providing Service or the terms of your employment or service agreement, if any), and in consideration of the grant of the RSUs to which you are otherwise not entitled, you irrevocably agree never to institute any claim against the Company, the Employer (as defined below), or any other Parent or Subsidiary of the Company, waive your ability, if any, to bring any such claim, and release the Company, the Employer and its Parent or Subsidiaries from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, you shall be deemed irrevocably to have agreed not to pursue such claim and agree to execute any and all documents necessary to request dismissal or withdrawal of such claim; and

(j) the following provisions apply only if you are providing Service outside the United States:

(i) the RSUs and the Shares subject to the RSUs, and the income and value of same, are not part of normal or expected compensation or salary for any purpose; and
(ii) neither the Company, the Employer nor any Parent or Subsidiary of the Company shall be liable for any foreign exchange rate fluctuation between your local currency and the United States Dollar that may affect the value of the RSUs or the subsequent sale of any Shares acquired upon settlement.

2. Settlement. Settlement of RSUs shall be made in the same calendar year as the applicable date of vesting under the vesting schedule set forth in the Notice; provided, however, that if the vesting date under the vesting schedule set forth in the Notice is in December, then settlement of any RSUs that vest in December shall be within 30 days of vesting. Settlement of RSUs shall be in Shares. Settlement means the delivery to you of the Shares vested under the RSUs. Fractional Shares will not be issued.

3. No Stockholder Rights. Unless and until such time as Shares are issued in settlement of vested RSUs, you shall have no ownership of the Shares allocated to the RSUs and shall have no right to dividends or to vote such Shares.

4. Dividend Equivalents. Dividends, if any (whether in cash or Shares), shall not be credited to you.

5. No Transfer. RSUs may not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of in any manner other than by will or by the laws of descent or distribution or court order or unless otherwise permitted by the Committee on a case-by-case basis.

6. Termination. If your Service terminates for any reason, all unvested RSUs shall be forfeited to the Company forthwith, and all rights you have to such RSUs shall immediately terminate, without payment of any consideration to you. For purposes of this award of RSUs, your Service will be considered terminated as of the date you are no longer providing Service (regardless of the reason for such termination and whether or not later found to be invalid or in breach of labor laws in the jurisdiction where you are employed or the terms of your employment or service agreement, if any) and will not be extended by any notice period mandated under local employment laws (e.g., Service would not include a period of “garden leave” or similar period). In case of any dispute as to whether your termination of Service has occurred, the Committee shall have sole discretion to determine whether such termination has occurred (including whether you may still be considered to be providing Services while on a leave of absence) and the effective date of such termination.

7. Tax Consequences. You acknowledge that there will be certain consequences with regard to income tax, national or social insurance contributions, payroll tax, fringe benefits tax, payment on account or other tax-related items (“Tax-Related Items”) upon settlement of the RSUs or disposition of the Shares, if any, received in connection therewith, and you should consult a tax adviser regarding your tax obligations prior to such settlement or disposition in the jurisdiction where you are subject to tax.

8. Responsibility for Taxes. Regardless of any action the Company or, if different, your actual employer (the “Employer”) takes with respect to any or all Tax-Related Items withholding or required deductions, you acknowledge that the ultimate liability for all Tax-Related Items legally due by you is and remains your responsibility and that the Company and/or the Employer (1) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the award, including the grant, vesting or settlement of the RSUs, the subsequent sale of Shares acquired pursuant to such settlement and the receipt of any dividends; and (2) do not commit to structure the terms of the award or any aspect of the RSUs to reduce or eliminate your liability for Tax-Related Items or achieve any particular tax result. You acknowledge that if you are subject to Tax-Related Items in more than one jurisdiction, the Company and/or the Employer may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Prior to the settlement of your RSUs, you shall pay or make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items withholding and payment on account obligations of the Company and/or the Employer. In this regard, you authorize the Company and/or the Employer, and their respective agents, at their discretion, to withhold all applicable Tax-Related Items legally payable by you from
your wages or other cash compensation paid to you by the Company and/or the Employer. With the Company’s consent, these arrangements may also include, if permissible under local law, (a) withholding Shares that otherwise would be issued to you when your RSUs are settled, provided that the Company only withholds the amount of Shares necessary to satisfy the minimum statutory withholding amount, (b) having the Company withhold taxes from the proceeds of the sale of the Shares, either through a voluntary sale or through a mandatory sale arranged by the Company (on your behalf pursuant to this authorization), (c) payment by you of an amount equal to the Tax-Related Items directly by cash, cheque, wire transfer, bank draft or money order payable to the Company, or (d) any other arrangement approved by the Company; all under such rules as may be established by the Committee and in compliance with the Company’s Insider Trading Policy and 10b5-1 Trading Plan Policy, if applicable; provided, however, that if you are a Section 16 officer of the Company under the Exchange Act, then the Committee (as constituted in accordance with Rule 16b-3 under the Exchange Act) shall establish the method of withholding from alternatives (a)-(d) above, and the Committee shall establish the method prior to the taxable or withholding event. The Fair Market Value of these Shares, determined as of the effective date when taxes otherwise would have been withheld in cash, will be applied as a credit against the Tax-Related Items.

Depending on the withholding method, the Company may withhold or account for Tax-Related Items by considering applicable minimum statutory withholding rates or other applicable withholding rates, including maximum applicable rates, in which case you will receive a refund of any over-withheld amount in cash and will have no entitlement to the Shares equivalent. If the obligation for Tax-Related Items is satisfied by withholding in Shares, for tax purposes, you are deemed to have been issued the full number of Shares subject to the vested RSUs, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items.

Finally, you agree to pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold as a result of your participation in the Plan or the vesting and settlement of the RSUs that cannot be satisfied by the means previously described. You acknowledge that the Company has no obligation to deliver Shares to you until you have satisfied the obligations in connection with the Tax-Related Items as described in this Section.

9. Data Privacy. You hereby explicitly and unambiguously consent to the collection, use and transfer, in electronic or other form, of your personal data as described in this RSU Agreement and any other RSU grant materials by and among, as applicable, the Company, the Employer and any other Parent or Subsidiaries, for the exclusive purpose of implementing, administering and managing your participation in the Plan.

You understand that the Company and the Employer may hold certain personal information about you, including, but not limited to, your name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any shares of stock or directorships held in the Company, details of all RSUs or any other entitlement to shares of stock awarded, canceled, exercised, vested, unvested or outstanding in your favor (“Data”), for the exclusive purpose of implementing, administering and managing the Plan.

You understand that Data will be transferred to the stock plan service provider as may be designated by the Company from time to time, which is assisting the Company with the implementation, administration and management of the Plan. You understand that the recipients of Data may be located in the United States or elsewhere, and that the recipients’ country (e.g., the United States) may have different data privacy laws and protections than your country. You understand that if you reside outside the United States, you may request a list with the names and addresses of any potential recipients of Data by contacting your local human resources representative. You authorize the Company, the designated broker and any other possible recipients which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer Data, in electronic or other form, for the sole purpose of implementing, administering and managing your participation in the Plan. You understand that Data will be held only as long as is necessary to implement, administer and manage your participation in the Plan. You understand that if you
reside outside the United States, you may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing your local human resources representative. Further, you understand that you are providing the consents herein on a purely voluntary basis. If you do not consent, or if you later seek to revoke your consent, your employment status or service and career with the Employer will not be adversely affected. The only adverse consequence of refusing or withdrawing your consent is that the Company would not be able to grant you RSUs or other equity awards or administer or maintain such awards. Therefore, you understand that refusing or withdrawing your consent may affect your ability to participate in the Plan. For more information on the consequences of your refusal to consent or withdrawal of consent, you understand that you may contact your local human resources representative.

10. Acknowledgement. The Company and you agree that the RSUs are granted under and governed by the Notice, this RSU Agreement and the provisions of the Plan. You: (i) acknowledge receipt of a copy of the Plan prospectus, (ii) represent that you have carefully read and are familiar with the provisions in the grant documents, and (iii) hereby accept the RSUs subject to all of the terms and conditions set forth in this RSU Agreement and those set forth in the Notice. You hereby agree to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to the Plan, the Notice and this RSU Agreement.

11. Entire Agreement; Enforcement of Rights. This RSU Agreement, the Plan and the Notice constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments or negotiations concerning the purchase of the Shares hereunder are superseded. No modification of or amendment to this RSU Agreement, nor any waiver of any rights under this RSU Agreement, shall be effective unless in writing and signed by the parties to this RSU Agreement. The failure by either party to enforce any rights under this RSU Agreement shall not be construed as a waiver of any rights of such party.

12. Compliance with Laws and Regulations. The issuance of Shares will be subject to and conditioned upon compliance by the Company and you with all applicable state, federal and foreign laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company’s Common Stock may be listed or quoted at the time of such issuance or transfer, which compliance the Company shall, in its absolute discretion, deem necessary or advisable. You understand that the Company is under no obligation to register or qualify the Common Stock with any state, federal or foreign securities commission or to seek approval or clearance from any governmental authority for the issuance or sale of the Shares. Further, you agree that the Company shall have unilateral authority to amend the Plan and this RSU Agreement without your consent to the extent necessary to comply with securities or other laws applicable to issuance of Shares. Finally, the Shares issued pursuant to this RSU Agreement shall be endorsed with appropriate legends, if any, determined by the Company.

13. No Advice Regarding Grant. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding your participation in the Plan, or your acquisition or sale of the underlying Shares. You are hereby advised to consult with your own personal tax, legal and financial advisors regarding your participation in the Plan before taking any action related to the Plan.

14. Governing Law; Venue. This RSU Agreement, all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law. For purposes of litigating any dispute that may arise directly or indirectly from the Plan, the Notice and this RSU Agreement, the parties hereby submit and consent to litigation in the exclusive jurisdiction of the State of California and agree that any such litigation shall be conducted only in the courts of San Francisco City and County, California or the federal courts of the United States for the Northern District of California and no other courts.
15. Severability. If one or more provisions of this RSU Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this RSU Agreement, (ii) the balance of this RSU Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this RSU Agreement shall be enforceable in accordance with its terms.

16. No Rights as Employee, Director or Consultant. Nothing in this RSU Agreement shall affect in any manner whatsoever the right or power of the Company, or a Parent or Subsidiary of the Company, to terminate your Service, for any reason, with or without Cause.

17. Consent to Electronic Delivery and Acceptance of All Plan Documents and Disclosures. By your acceptance of this award of RSUs, you consent to the electronic delivery of the Notice, this RSU Agreement, the Plan, account statements, Plan prospectuses required by the SEC, U.S. financial reports of the Company, and all other documents that the Company is required to deliver to its stockholders (including, without limitation, annual reports and proxy statements) or other communications or information related to the RSUs. Electronic delivery may include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other delivery determined at the Company’s discretion. You acknowledge that you may receive from the Company a paper copy of any documents delivered electronically at no cost if you contact the Company by telephone, through a postal service or electronic mail at [insert email]. You further acknowledge that you will be provided with a paper copy of any documents delivered electronically if electronic delivery fails; similarly, you understand that you must provide on request to the Company or any designated third party a paper copy of any documents delivered electronically if electronic delivery fails. You agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company. Also, you understand that your consent may be revoked or changed, including any change in the electronic mail address to which documents are delivered (if you have provided an electronic mail address), at any time by notifying the Company of such revised or revoked consent by telephone, postal service or electronic mail at [insert email]. Finally, you understand that you are not required to consent to electronic delivery.

18. Insider Trading Restrictions/Market Abuse Laws. You acknowledge that, depending on your country, you may be subject to insider trading restrictions and/or market abuse laws, which may affect your ability to acquire or sell the Shares or rights to Shares under the Plan during such times as you are considered to have “inside information” regarding the Company (as defined by the laws in your country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. You acknowledge that it is your responsibility to comply with any applicable restrictions, and you are advised to speak to your personal advisor on this matter.

19. Language. If you have received this RSU Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

20. Appendix. Notwithstanding any provisions in this Global Restricted Stock Unit Agreement, this award of RSUs shall be subject to any special terms and conditions set forth in any Appendix hereto for your country. Moreover, if you relocate to one of the countries included in the Appendix, the special terms and conditions for such country will apply to you, to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. The Appendix constitutes part of this RSU Agreement.

21. Imposition of Other Requirements. The Company reserves the right to impose other requirements on your participation in the Plan, on the RSUs and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require you to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.
22. Waiver. You acknowledge that a waiver by the Company of breach of any provision of this RSU Agreement shall not operate or be construed as a waiver of any other provision of this RSU Agreement, or of any subsequent breach by you or any other Participant.

23. Code Section 409A. For purposes of this RSU Agreement, a termination of employment will be determined consistent with the rules relating to a “separation from service” as defined in Section 409A of the Code and the regulations thereunder (“Section 409A”). Notwithstanding anything else provided herein, to the extent any payments provided under this RSU Agreement in connection with your termination of employment constitute deferred compensation subject to Section 409A, and you are deemed at the time of such termination of employment to be a “specified employee” under Section 409A, then such payment shall not be made or commence until the earlier of (i) the expiration of the six-month period measured from your separation from service from the Company or (ii) the date of your death following such a separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to you including, without limitation, the additional tax for which you would otherwise be liable under Section 409A(a)(1)(B) in the absence of such a deferral. To the extent any payment under this RSU Agreement may be classified as a “short-term deferral” within the meaning of Section 409A, such payment shall be deemed a short-term deferral, even if it may also qualify for an exemption from Section 409A under another provision of Section 409A. Payments pursuant to this section are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

24. Award Subject to Company Clawback or Recoupment. The RSUs shall be subject to clawback or recoupment pursuant to any compensation clawback or recoupment policy adopted by the Board or required by law during the term of your employment or other Service that is applicable to executive officers, Employees, Directors or other service providers of the Company, and in addition to any other remedies available under such policy and applicable law may require the cancellation of your RSUs (whether vested or unvested) and the recoupment of any gains realized with respect to your RSUs.

BY ACCEPTING THIS AWARD OF RSUS, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.
FITBIT, INC.
2015 EMPLOYEE STOCK PURCHASE PLAN

1. PURPOSE. Fitbit, Inc. adopted the Plan effective as of the date of the IPO. The purpose of this Plan is to provide eligible employees of the Company and the Participating Corporations with a means of acquiring an equity interest in the Company, to enhance such employees’ sense of participation in the affairs of the Company. Capitalized terms not defined elsewhere in the text are defined in Section 28.

2. ESTABLISHMENT OF PLAN. The Company proposes to grant rights to purchase shares of Common Stock to eligible employees of the Company and its Participating Corporations pursuant to this Plan. The Company intends this Plan to qualify as an “employee stock purchase plan” under Section 423 of the Code (including any amendments to or replacements of such Section), and this Plan shall be so construed, although the Company makes no undertaking or representation to maintain such qualification. Any term not expressly defined in this Plan but defined for purposes of Section 423 of the Code shall have the same definition herein. In addition, with regard to offers of options to purchase shares of Common Stock under the Plan to employees working for a Subsidiary or an Affiliate outside the United States, this Plan authorizes the grant of options under a Non-Section 423 Component that is not intended to meet Section 423 requirements, provided, to the extent necessary under Section 423 of the Code, the other terms and conditions of the Plan are met.

Subject to Section 14, a total 2,500,000 shares of Common Stock is reserved for issuance under this Plan. In addition, on each January 1 of each calendar year, the aggregate number of shares of Common Stock reserved for issuance under the Plan shall be increased automatically by the number of shares equal to one percent (1%) of the total number of outstanding shares of Common Stock and Class B common stock collectively outstanding on the immediately preceding December 31 (rounded down to the nearest whole share); provided, that the Board or the Committee may in its sole discretion reduce the amount of the increase in any particular year. Subject to Section 14, no more than 25,000,000 shares of Common Stock may be issued over the term of this Plan. The number of shares initially reserved for issuance under this Plan and the maximum number of shares that may be issued under this Plan shall be subject to adjustments effected in accordance with Section 14. Any or all such shares may be granted under the Section 423 Component.

3. ADMINISTRATION. The Plan will be administered by the Committee. Subject to the provisions of this Plan and the limitations of Section 423 of the Code or any successor provision in the Code, all questions of interpretation or application of this Plan shall be determined by the Committee and its decisions shall be final and binding upon all eligible employees and Participants. The Committee will have full and exclusive discretionary authority to construe, interpret and apply the terms of the Plan, to determine eligibility, to designate the Participating Corporations, to determine whether Participating Corporations shall participate in the Section 423 Component or Non-Section 423 Component and to decide upon any and all claims filed under the Plan. Every finding, decision and determination made by the Committee will, to the full extent permitted by law, be final and binding upon all parties. Notwithstanding any provision to the contrary in this Plan, the Committee may adopt rules, sub-plans, and/or procedures relating to the operation and administration of the Plan designed to comply with local laws, regulations or customs or to achieve tax, securities law or other objectives for eligible employees outside of the United States. The Committee will have the authority to determine the Fair Market Value of the Common Stock (which determination shall be final, binding and conclusive for all purposes) in accordance with Section 8 below and to interpret Section 8 of the Plan in connection with circumstances that impact the Fair Market Value. Members of the Committee shall receive no compensation for their services in connection with the administration of this Plan, other than standard fees as established from time to time by the Board for services rendered by Board members serving on Board committees. All expenses incurred in connection with the administration of this Plan shall be paid by the Company. For purposes of this Plan, the Committee may designate separate offerings under the Plan (the terms of which need not be identical) in which eligible employees of one or more Participating Corporations will participate, even if the dates of the applicable Offering Periods of each such offering are identical.
4. ELIGIBILITY.

(a) Any employee of the Company or the Participating Corporations is eligible to participate in an Offering Period under this Plan, except that one or more of the following categories of employees may be excluded from coverage under the Plan by the Committee (other than where such exclusion is prohibited by applicable law):

(i) employees who are customarily employed for twenty (20) hours or less per week;

(ii) employees who are customarily employed for five (5) months or less in a calendar year; and

(iii) employees who do not meet any other eligibility requirements that the Committee may choose to impose (within the limits permitted by the Code).

The foregoing notwithstanding, an individual shall not be eligible if his or her participation in the Plan is prohibited by the law of any country that has jurisdiction over him or her, if complying with the laws of the applicable country would cause the Plan to violate Section 423 of the Code, or if he or she is subject to a collective bargaining agreement that does not provide for participation in the Plan.

(b) No employee who, together with any other person whose stock would be attributed to such employee pursuant to Section 424(d) of the Code, owns stock or holds options to purchase stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or its Parent or Subsidiary or who, as a result of being granted an option under this Plan with respect to such Offering Period, would own stock or hold options to purchase stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or its Parent or Subsidiary shall be granted an option to purchase Common Stock under the Plan. Notwithstanding the foregoing, the rules of Section 424(d) of the Code shall apply in determining share ownership and the extent to which shares held under outstanding equity awards are to be treated as owned by the employee.

5. OFFERING DATES.

(a) Each Offering Period of this Plan may be of up to six (6) months duration and shall commence and end at the times designated by the Committee. Each Offering Period shall consist of one Purchase Period during which Contributions made by Participants are accumulated under this Plan.

(b) The initial Offering Period shall run coterminous with the initial Purchase Period and shall commence on the Effective Date and shall end with the Purchase Date that occurs on or prior to the May 15 or November 15 that first occurs six (6) months or more after the Effective Date. The initial Offering Period shall consist of a single Purchase Period. Thereafter, a six-month Offering Period shall commence on each May 16 or November 16, with each such Offering Period also consisting of a single six-month Purchase Period, except as otherwise provided by an applicable subplan, or on such other date determined by the Committee. The Committee may at any time establish a different duration for an Offering Period or Purchase Period to be effective after the next scheduled Purchase Date, up to a maximum duration of twenty-seven (27) months.
6. PARTICIPATION IN THIS PLAN.

(a) Any employee who is an eligible employee determined in accordance with Section 4 immediately prior to the initial Offering Period will be automatically enrolled in the initial Offering Period under this Plan for the maximum number of shares of Common Stock purchasable. With respect to subsequent Offering Periods, any eligible employee determined in accordance with Section 4 will be eligible to participate in this Plan, subject to the requirement of Section 6 (b) hereof and the other terms and provisions of this Plan.

(b) With respect to Offering Periods after the initial Offering Period, a Participant may elect to participate in this Plan by submitting an enrollment agreement prior to the commencement of the Offering Period (or such earlier date as the Committee may determine) to which such agreement relates.

(c) Once an employee becomes a Participant in an Offering Period, then such Participant will automatically participate in each subsequent Offering Period commencing immediately following the last day of the prior Offering Period unless the Participant withdraws or is deemed to withdraw from this Plan or terminates further participation in an Offering Period as set forth in Section 11 below. A Participant who is continuing participation pursuant to the preceding sentence is not required to file any additional enrollment agreement in order to continue participation in this Plan; a Participant who is not continuing participation pursuant to the preceding sentence is required to file an enrollment agreement prior to the commencement of the Offering Period (or such earlier date as the Committee may determine) to which such agreement relates.

7. GRANT OF OPTION ON ENROLLMENT. Becoming a Participant with respect to an Offering Period will constitute the grant (as of the Offering Date) by the Company to such Participant of an option to purchase on the Purchase Date up to that number of shares of Common Stock of the Company determined by a fraction, the numerator of which is the amount accumulated in such Participant’s Contribution account during such Purchase Period and the denominator of which is the lower of (i) eighty-five percent (85%) of the Fair Market Value of a share of Common Stock on the Offering Date (but in no event less than the par value of a share of the Common Stock), or (ii) eighty-five percent (85%) of the Fair Market Value of a share of the Common Stock on the Purchase Date; provided, however, that for the Purchase Period within the initial Offering Period the numerator shall be fifteen percent (15%) of the Participant’s compensation for such Purchase Period, or such lower percentage as determined by the Committee prior to the start of the Offering Period, and provided, further, that the number of shares of Common Stock subject to any option granted pursuant to this Plan shall not exceed the lesser of (x) the maximum number of shares set by the Committee pursuant to Section 10(b) below with respect to the applicable Purchase Date, or (y) the maximum number of shares which may be purchased pursuant to Section 10(a) below with respect to the applicable Purchase Date.

8. PURCHASE PRICE. The Purchase Price per share at which a share of Common Stock will be sold in any Offering Period shall be eighty-five percent (85%) of the lesser of:

(a) The Fair Market Value on the Offering Date; or

(b) The Fair Market Value on the Purchase Date.

9. PAYMENT OF PURCHASE PRICE; CONTRIBUTION CHANGES; SHARE ISSUANCES.

(a) The Purchase Price shall be accumulated by regular payroll deductions made during each Offering Period, unless the Committee determines with respect to categories of Participants outside the United States that Contributions may be made in another form due to local legal requirements. The Contributions are made as a percentage of the Participant’s Compensation in one percent (1%)
increments not less than one percent (1%), nor greater than fifteen percent (15%) or such lower limit set by the Committee. “Compensation” shall mean base salary (or in foreign jurisdictions, equivalent cash compensation); however, the Committee may at any time prior to the beginning of an Offering Period determine that for that and future Offering Periods, Compensation shall mean all cash compensation reported on the employee’s Form W-2 or corresponding local country tax return, including without limitation base salary or regular hourly wages, bonuses, incentive compensation, commissions, overtime, shift premiums, plus draws against commissions. For purposes of determining a Participant’s Compensation, any election by such Participant to reduce his or her regular cash remuneration under Sections 125 or 401(k) of the Code (or in foreign jurisdictions, equivalent salary deductions) shall be treated as if the Participant did not make such election. Contributions shall commence on the first payday following the last Purchase Date (with respect to the initial Offering Period, as soon as practicable following the effective date of filing with the U.S. Securities and Exchange Commission a securities registration statement for the Plan) and shall continue to the end of the Offering Period unless sooner altered or terminated as provided in this Plan. Notwithstanding the foregoing, the terms of any sub-plan may permit matching shares without the payment of any purchase price.

(b) A Participant may decrease the rate of Contributions during an Offering Period by filing with the Company or a third party designated by the Company a new authorization for Contributions, with the new rate to become effective no later than the second payroll period commencing after the Company’s receipt of the authorization and continuing for the remainder of the Offering Period unless changed as described below. A decrease in the rate of Contributions may be made once during an Offering Period or more frequently under rules determined by the Committee. A Participant may increase or decrease the rate of Contributions for any subsequent Offering Period by filing with the Company or a third party designated by the Company a new authorization for Contributions prior to the beginning of such Offering Period, or such other time period as specified by the Committee.

(c) A Participant may reduce his or her Contribution percentage to zero during an Offering Period by filing with the Company or a third party designated by the Company a request for cessation of Contributions. Such reduction shall be effective beginning no later than the second payroll period after the Company’s receipt of the request and no further Contributions will be made for the duration of the Offering Period. Contributions credited to the Participant’s account prior to the effective date of the request shall be used to purchase shares of Common Stock in accordance with Subsection (e) below. A reduction of the Contribution percentage to zero shall be treated as such Participant’s withdrawal from such Offering Period and the Plan, effective as of the day after the next Purchase Date following the filing date of such request with the Company.

(d) All Contributions made for a Participant are credited to his or her book account under this Plan and are deposited with the general funds of the Company, except to the extent local legal restrictions outside the United States require segregation of such Contributions. No interest accrues on the Contributions, except to the extent required due to local legal requirements. All Contributions received or held by the Company may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such Contributions, except to the extent necessary to comply with local legal requirements outside the United States.

(e) On each Purchase Date, so long as this Plan remains in effect and provided that the Participant has not submitted a signed and completed withdrawal form before that date which notifies the Company that the Participant wishes to withdraw from that Offering Period under this Plan and have all Contributions accumulated in the account maintained on behalf of the Participant as of that date returned to the Participant, the Company shall apply the funds then in the Participant’s account to the purchase of whole shares of Common Stock reserved under the option granted to such Participant with respect to the Offering Period to the extent that such option is exercisable on the Purchase Date. The Purchase Price per share shall be as specified in Section 8 of this Plan. Any fractional share, as calculated under this Subsection (e), shall be rounded down to the next lower whole share, unless the Committee determines with respect to all Participants that any fractional share shall be credited as a fractional share.
Any amount remaining in a Participant’s account on a Purchase Date which is less than the amount necessary to purchase a full share of the Common Stock shall be returned to the Participant, without interest (except to the extent necessary to comply with local legal requirements outside the United States); however, the Committee may provide that such amounts may be carried forward into the next Purchase Period or Offering Period, as the case may be. In the event that this Plan has been oversubscribed, all funds not used to purchase shares on the Purchase Date shall be returned to the Participant, without interest (except to the extent required due to local legal requirements outside the United States). No Common Stock shall be purchased on a Purchase Date on behalf of any employee whose participation in this Plan has terminated prior to such Purchase Date, except to the extent required due to local legal requirements outside the United States.

(f) As promptly as practicable after the Purchase Date, the Company shall issue shares for the Participant’s benefit representing the shares purchased upon exercise of his or her option.

(g) During a Participant’s lifetime, his or her option to purchase shares hereunder is exercisable only by him or her. The Participant will have no interest or voting right in shares covered by his or her option until such option has been exercised.

(h) To the extent required by applicable federal, state, local or foreign law, a Participant shall make arrangements satisfactory to the Company and the Participating Corporation employing the Participant for the satisfaction of any withholding tax obligations that arise in connection with the Plan. The Company or any Subsidiary or Affiliate, as applicable, may withhold, by any method permissible under the applicable law, the amount necessary for the Company or Subsidiary or Affiliate, as applicable, to meet applicable withholding obligations, including any withholding required to make available to the Company or Subsidiary or Affiliate, as applicable, any tax deductions or benefits attributable to the sale or early disposition of shares of Common Stock by a Participant. The Company shall not be required to issue any shares of Common Stock under the Plan until such obligations are satisfied.

10. LIMITATIONS ON SHARES TO BE PURCHASED.

(a) Any other provision of the Plan notwithstanding, no Participant shall purchase Common Stock with a Fair Market Value in excess of the following limit:

(i) In the case of Common Stock purchased during an Offering Period that commenced in the current calendar year, the limit shall be equal to (A) $25,000 minus (B) the Fair Market Value of the Common Stock that the Participant previously purchased in the current calendar year (under this Plan and all other employee stock purchase plans of the Company or any Parent or Subsidiary).

(ii) In the case of Common Stock purchased during an Offering Period that commenced in the immediately preceding calendar year, the limit shall be equal to (A) $50,000 minus (B) the Fair Market Value of the Common Stock that the Participant previously purchased (under this Plan and all other employee stock purchase plans of the Company or any Parent or Subsidiary) in the current calendar year and in the immediately preceding calendar year.

For purposes of this Subsection (a), the Fair Market Value of Common Stock shall be determined in each case as of the beginning of the Offering Period in which such Common Stock is purchased. Employee stock purchase plans not described in Section 423 of the Code shall be disregarded. If a Participant is precluded by this Subsection (a) from purchasing additional Common Stock under the Plan, then his or her Contributions shall automatically be discontinued and shall automatically resume at the beginning of the earliest Purchase Period that will end in the next calendar year (if he or she then is an eligible employee), provided that when the Company automatically resumes such Contributions, the Company must apply the rate in effect immediately prior to such suspension.
In no event shall a Participant be permitted to purchase more than 2,500 shares on any one Purchase Date or such lesser number as the Committee shall determine. If a lower limit is set under this Subsection (b), then all Participants will be notified of such limit prior to the commencement of the next Offering Period for which it is to be effective.

(c) If the number of shares to be purchased on a Purchase Date by all Participants exceeds the number of shares then available for issuance under this Plan, then the Company will make a pro rata allocation of the remaining shares in as uniform a manner as shall be reasonably practicable and as the Committee shall determine to be equitable. In such event, the Company will give notice of such reduction of the number of shares to be purchased under a Participant’s option to each Participant affected.

(d) Any Contributions accumulated in a Participant’s account which are not used to purchase stock due to the limitations in this Section 10, and not covered by Section 9(e), shall be returned to the Participant as soon as practicable after the end of the applicable Purchase Period, without interest (except to the extent required due to local legal requirements outside the United States).

11. WITHDRAWAL.

(a) Each Participant may withdraw from an Offering Period under this Plan pursuant to a method specified for such purpose by the Company. Such withdrawal may be elected at any time prior to the end of an Offering Period, or such other time period as specified by the Committee.

(b) Upon withdrawal from this Plan, the accumulated Contributions shall be returned to the withdrawn Participant, without interest (except to the extent required due to local legal requirements outside the United States), and his or her interest in this Plan shall terminate. In the event a Participant voluntarily elects to withdraw from this Plan, he or she may not resume his or her participation in this Plan during the same Offering Period, but he or she may participate in any Offering Period under this Plan which commences on a date subsequent to such withdrawal by filing a new authorization for Contributions in the same manner as set forth in Section 6 above for initial participation in this Plan.

12. TERMINATION OF EMPLOYMENT. Termination of a Participant’s employment for any reason, including retirement, death, disability, or the failure of a Participant to remain an eligible employee of the Company or of a Participating Corporation, immediately terminates his or her participation in this Plan (except as required due to local legal requirements outside the United States). In such event, accumulated Contributions credited to the Participant’s account will be returned to him or her or, in the case of his or her death, to his or her legal representative, without interest (except to the extent required due to local legal requirements outside the United States). For purposes of this Section 12, an employee will not be deemed to have terminated employment or failed to remain in the continuous employ of the Company or of a Participating Corporation in the case of sick leave, military leave, or any other leave of absence approved by the Company; provided that such leave is for a period of not more than ninety (90) days or reemployment upon the expiration of such leave is guaranteed by contract or statute. The Company will have sole discretion to determine whether a Participant has terminated employment and the effective date on which the Participant terminated employment, regardless of any notice period or garden leave required under local law.

13. RETURN OF CONTRIBUTIONS. In the event a Participant’s interest in this Plan is terminated by withdrawal, termination of employment or otherwise, or in the event this Plan is terminated by the Board, the Company shall deliver to the Participant all accumulated Contributions credited to such Participant’s account. No interest shall accrue on the Contributions of a Participant in this Plan (except to the extent required due to local legal requirements outside the United States).

14. CAPITAL CHANGES. If the number of outstanding shares is changed by a stock dividend, recapitalization, stock split, reverse stock split, subdivision, combination, reclassification or
similar change in the capital structure of the Company, without consideration, then the Committee shall adjust the number and class of Common Stock that may be delivered under the Plan, the Purchase Price per share and the number of shares of Common Stock covered by each option under the Plan which has not yet been exercised, and the numerical limits of Sections 2 and 10 shall be proportionately adjusted, subject to any required action by the Board or the stockholders of the Company and in compliance with the applicable securities laws, provided that fractions of a share will not be issued.

15. NONASSIGNABILITY. Neither Contributions credited to a Participant’s account nor any rights with regard to the exercise of an option or to receive shares under this Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in Section 22 below) by the Participant. Any such attempt at assignment, transfer, pledge or other disposition shall be void and without effect.

16. USE OF PARTICIPANT FUNDS AND REPORTS. The Company may use all Contributions received or held by it under the Plan for any corporate purpose, and the Company will not be required to segregate Participant Contributions (except to the extent required due to local legal requirements outside the United States). Until shares are issued, Participants will only have the rights of an unsecured creditor unless otherwise required under local law. Each Participant shall receive promptly after the end of each Purchase Period a report of his or her account setting forth the total Contributions accumulated, the number of shares purchased, the per share price thereof and the remaining cash balance, if any, carried forward to the next Purchase Period or Offering Period, as the case may be.

17. NOTICE OF DISPOSITION. Each U.S. taxpayer Participant shall notify the Company in writing if the Participant disposes of any of the shares purchased in any Offering Period pursuant to this Plan if such disposition occurs within two (2) years from the Offering Date or within one (1) year from the Purchase Date on which such shares were purchased (the “Notice Period”). The Company may, at any time during the Notice Period, place a legend or legends on any certificate representing shares acquired pursuant to this Plan requesting the Company’s transfer agent to notify the Company of any transfer of the shares. The obligation of the Participant to provide such notice shall continue notwithstanding the placement of any such legend on the certificates.

18. NO RIGHTS TO CONTINUED EMPLOYMENT. Neither this Plan nor the grant of any option hereunder shall confer any right on any employee to remain in the employ of the Company or any Participating Corporation, or restrict the right of the Company or any Participating Corporation to terminate such employee’s employment.

19. EQUAL RIGHTS AND PRIVILEGES. All eligible employees granted an option under the Section 423 Component of this Plan shall have equal rights and privileges with respect to this Plan or within any separate offering under the Plan so that this Plan qualifies as an “employee stock purchase plan” within the meaning of Section 423 or any successor provision of the Code and the related regulations. Any provision of this Plan which is inconsistent with Section 423 or any successor provision of the Code, without further act or amendment by the Company, the Committee or the Board, shall be reformed to comply with the requirements of Section 423. This Section 19 shall take precedence over all other provisions in this Plan.

20. NOTICES. All notices or other communications by a Participant to the Company under or in connection with this Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

21. TERM; STOCKHOLDER APPROVAL. This Plan will become effective on the Effective Date. This Plan shall be approved by the stockholders of the Company, in any manner permitted by applicable corporate law, within twelve (12) months before or after the date this Plan is adopted by the Board. No purchase of shares that are subject to such stockholder approval before
becoming available under this Plan shall occur prior to stockholder approval of such shares and the Board or Committee may delay any Purchase Date and postpone the commencement of any Offering Period subsequent to such Purchase Date as deemed necessary or desirable to obtain such approval (provided that if a Purchase Date would occur more than twenty-four (24) months after commencement of the Offering Period to which it relates, then such Purchase Date shall not occur and instead such Offering Period shall terminate without the purchase of such shares and Participants in such Offering Period shall be refunded their Contributions without interest). This Plan shall continue until the earlier to occur of (a) termination of this Plan by the Board (which termination may be effected by the Board at any time pursuant to Section 25 below), (b) issuance of all of the shares of Common Stock reserved for issuance under this Plan, or (c) the tenth anniversary of the Effective Date under the Plan.

22. DESIGNATION OF BENEFICIARY.

(a) Unless otherwise determined by the Committee, a Participant may file a written designation of a beneficiary who is to receive any cash from the Participant’s account under this Plan in the event of such Participant’s death prior to a Purchase Date. Such form shall be valid only if it was filed with the Company at the prescribed location before the Participant’s death.

(b) If authorized by the Company, such designation of beneficiary may be changed by the Participant at any time by written notice filed with the Company at the prescribed location before the Participant’s death. In the event of the death of a Participant and in the absence of a beneficiary validly designated under this Plan who is living at the time of such Participant’s death, the Company shall deliver such cash to the executor or administrator of the estate of the Participant or to the legal heirs of the Participant.

23. CONDITIONS UPON ISSUANCE OF SHARES; LIMITATION ON SALE OF SHARES. Shares shall not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the U.S. Securities Act of 1933, as amended, the U.S. Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, and the requirements of any stock exchange or automated quotation system upon which the shares may then be listed, exchange control restrictions and/or securities law restrictions outside the United States, and shall be further subject to the approval of counsel for the Company with respect to such compliance. Shares may be held in trust or subject to further restrictions as permitted by any subplan.

24. APPLICABLE LAW. The Plan shall be governed by the substantive laws (excluding the conflict of laws rules) of the State of Delaware.

25. AMENDMENT OR TERMINATION. The Committee, in its sole discretion, may amend, suspend, or terminate the Plan, or any part thereof, at any time and for any reason. Unless otherwise required by applicable law, if the Plan is terminated, the Committee, in its discretion, may elect to terminate all outstanding Offering Periods either immediately or upon completion of the purchase of shares of Common Stock on the next Purchase Date (which may be sooner than originally scheduled, if determined by the Committee in its discretion), or may elect to permit Offering Periods to expire in accordance with their terms (and subject to any adjustment pursuant to Section 14). If an Offering Period is terminated prior to its previously-scheduled expiration, all amounts then credited to Participants’ accounts for such Offering Period, which have not been used to purchase shares of Common Stock, shall be returned to those Participants (without interest thereon, except as otherwise required under local laws) as soon as administratively practicable. Further, the Committee will be entitled to change the Purchase Periods and Offering Periods, limit the frequency and/or number of changes in the amount contributed during an Offering Period, establish the exchange ratio applicable to amounts contributed in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the administration of the Plan, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the
purchase of Common Stock for each Participant properly correspond with amounts contributed from the Participant’s base salary and other eligible compensation, and establish such other limitations or procedures as the Committee determines in its sole discretion advisable which are consistent with the Plan. Such actions will not require stockholder approval or the consent of any Participants. However, no amendment shall be made without approval of the stockholders of the Company (obtained in accordance with Section 21 above) within twelve (12) months of the adoption of such amendment (or earlier if required by Section 21) if such amendment would: (a) increase the number of shares that may be issued under this Plan; or (b) change the designation of the employees (or class of employees) eligible for participation in this Plan. In addition, in the event the Board or Committee determines that the ongoing operation of the Plan may result in unfavorable financial accounting consequences, the Board or Committee may, in its discretion and, to the extent necessary or desirable, modify, amend or terminate the Plan to reduce or eliminate such accounting consequences including, but not limited to: (i) amending the definition of compensation, including with respect to an Offering Period underway at the time; (ii) altering the Purchase Price for any Offering Period including an Offering Period underway at the time of the change in Purchase Price; (iii) shortening any Offering Period by setting a Purchase Date, including an Offering Period underway at the time of the Committee’s action; (iv) reducing the maximum percentage of Compensation a participant may elect to set aside as Contributions; and (v) reducing the maximum number of shares a Participant may purchase during any Offering Period. Such modifications or amendments will not require approval of the stockholders of the Company or the consent of any Participants.

26. CORPORATE TRANSACTIONS. In the event of a Corporate Transaction, the Offering Period for each outstanding right to purchase Common Stock will be shortened by setting a new Purchase Date and will end on the new Purchase Date. The new Purchase Date shall occur on or prior to the consummation of the Corporate Transaction, as determined by the Board or Committee, and the Plan shall terminate on the consummation of the Corporate Transaction.

27. CODE SECTION 409A; TAX QUALIFICATION.

(a) Options granted under the Plan generally are exempt from the application of Section 409A of the Code. However, options granted to U.S. taxpayers which are not intended to meet the Code Section 423 requirements are intended to be exempt from the application of Section 409A of the Code under the short-term deferral exception and any ambiguities shall be construed and interpreted in accordance with such intent. Subject to Subsection (b), options granted to U.S. taxpayers outside of the Code Section 423 requirements shall be subject to such terms and conditions that will permit such options to satisfy the requirements of the short-term deferral exception available under Section 409A of the Code, including the requirement that the shares of Common Stock subject to an option be delivered within the short-term deferral period. Subject to Subsection (b), in the case of a Participant who would otherwise be subject to Section 409A of the Code, to the extent the Committee determines that an option or the exercise, payment, settlement or deferral thereof is subject to Section 409A of the Code, the option shall be granted, exercised, paid, settled or deferred in a manner that will comply with Section 409A of the Code, including Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date. Notwithstanding the foregoing, the Company shall have no liability to a Participant or any other party if the option that is intended to be exempt from or compliant with Section 409A of the Code is not so exempt or compliant or for any action taken by the Committee with respect thereto.

(b) Although the Company may endeavor to (i) qualify an option for favorable tax treatment under the laws of the United States or jurisdictions outside of the United States or (ii) avoid adverse tax treatment (e.g., under Section 409A of the Code), the Company makes no representation to that effect and expressly disavows any covenant to maintain favorable or avoid unfavorable tax treatment, notwithstanding anything to the contrary in this Plan, including Subsection (a). The Company shall be unconstrained in its corporate activities without regard to the potential negative tax impact on Participants under the Plan.
28. DEFINITIONS.

(a) “Affiliate” means any entity, other than a Subsidiary or Parent, (i) that, directly or indirectly, is controlled by, controls or is under common control with, the Company and (ii) in which the Company has a significant equity interest, in either case as determined by the Committee, whether now or hereafter existing.

(b) “Board” shall mean the Board of Directors of the Company.

(c) “Code” shall mean the U.S. Internal Revenue Code of 1986, as amended.

(d) “Committee” shall mean the Compensation Committee of the Board that consists exclusively of one or more members of the Board appointed by the Board.

(e) “Common Stock” shall mean the Class A common stock of the Company.

(f) “Company” shall mean Fitbit, Inc.

(g) “Contributions” means payroll deductions taken from a Participant’s Compensation and used to purchase shares of Common Stock under the Plan and, to the extent payroll deductions are not permitted by applicable laws (as determined by the Committee in its sole discretion) contributions by other means, provided, however, that allowing such other contributions does not jeopardize the qualification of the Plan as an “employee stock purchase plan” under Section 423 of the Plan.

(h) “Corporate Transaction” means the occurrence of any of the following events: (i) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the “beneficial owner” (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company’s then outstanding voting securities; or (ii) the consummation of the sale or disposition by the Company of all or substantially all of the Company’s assets; or (iii) the consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

(i) “Effective Date” shall mean the date on which the Registration Statement covering the initial public offering of the shares of Common Stock is declared effective by the U.S. Securities and Exchange Commission.

(j) “Fair Market Value” shall mean, as of any date, the value of a share of Common Stock determined as follows:

1. if such Common Stock is then quoted on the Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market (collectively, the “Nasdaq Market”), its closing price on the Nasdaq Market on the date of determination, or if there are no sales for such date, then the last preceding business day on which there were sales, as reported in The Wall Street Journal or such other source as the Board or the Committee deems reliable; or

2. if such Common Stock is publicly traded and is then listed on a national securities exchange, its closing price on the date of determination on the principal national securities exchange on which the Common Stock is listed or admitted to trading as reported in The Wall Street Journal or such other source as the Board or the Committee deems reliable; or
(3) if such Common Stock is publicly traded but is neither quoted on the Nasdaq Market nor listed or admitted to trading on a national securities exchange, the average of the closing bid and asked prices on the date of determination as reported in The Wall Street Journal or such other source as the Board or the Committee deems reliable; or

(4) with respect to the initial Offering Period, Fair Market Value on the Offering Date shall be the price at which shares of Common Stock are offered to the public pursuant to the Registration Statement covering the initial public offering of shares of Common Stock; or

(5) if none of the foregoing is applicable, by the Board or the Committee in good faith.

(k) “IPO” shall mean the initial public offering of Common Stock.

(l) “Non-Section 423 Component” means the part of the Plan which is not intended to meet the requirements set forth in Section 423 of the Code.

(m) “Notice Period” shall mean within two (2) years from the Offering Date or within one (1) year from the Purchase Date on which such shares were purchased.

(n) “Offering Date” shall mean the first business day of each Offering Period. However, for the initial Offering Period the Offering Date shall be the Effective Date.

(o) “Offering Period” shall mean a period with respect to which the right to purchase Common Stock may be granted under the Plan, as determined by the Committee pursuant to Section 5(a).

(p) “Parent” shall have the same meaning as “parent corporation” in Sections 424(e) and 424(f) of the Code.

(q) “Participant” shall mean an eligible employee who meets the eligibility requirements set forth in Section 4 and who is either automatically enrolled in the initial Offering Period or who elects to participate in this Plan pursuant to Section 6(b).

(r) “Participating Corporation” shall mean any Parent, Subsidiary or Affiliate that the Committee designates from time to time as eligible to participate in this Plan. For purposes of the Section 423 Component, only the Parent and Subsidiaries may be Participating Corporations, provided, however, that at any given time a Parent or Subsidiary that is a Participating Corporation under the Section 423 Component shall not be a Participating Corporation under the Non-Section 423 Component. The Committee may provide that any Participating Corporation shall only be eligible to participate in the Non-Section 423 Component.

(s) “Plan” shall mean this Fitbit, Inc. 2015 Employee Stock Purchase Plan, as may be amended from time to time.

(t) “Purchase Date” shall mean the last business day of each Purchase Period.

(u) “Purchase Period” shall mean a period during which Contributions may be made toward the purchase of Common Stock under the Plan, as determined by the Committee pursuant to Section 5(b).
(v) "Purchase Price" shall mean the price at which Participants may purchase shares of Common Stock under the Plan, as determined pursuant to Section 8.

(w) "Section 423 Component" means the part of the Plan, which excludes the Non-Section 423 Component, pursuant to which options to purchase shares of Common Stock under the Plan that satisfy the requirements for "employee stock purchase plans" set forth in Section 423 of the Code may be granted to eligible employees.

(x) "Subsidiary" shall have the same meaning as "subsidiary corporation" in Sections 424(e) and 424(f) of the Code.
April 24, 2014

PERSONAL AND CONFIDENTIAL

Bill Zerella

Dear Bill,

Fitbit, Inc. (the “Company”) is pleased to offer you the full-time position of Chief Financial Officer reporting to the CEO. We are excited about the prospect of you joining our team, and look forward to the addition of your professionalism and experience to help the Company achieve its goals.

You will be paid an annual salary of Three Hundred Thousand Dollars ($300,000). Your salary will be paid in accordance with the Company’s normal payroll practices as established or modified from time to time. Currently, salaries are paid on a semi-monthly basis. In connection with your employment, you will be eligible to participate in benefits programs that have been adopted by the Company to the same extent as, and subject to the same terms, conditions and limitations applicable to, other employees of the Company of similar rank and tenure.

You will be eligible to receive an annual bonus of Seventy Thousand Dollars ($70,000). Such bonus will be earned by completing goals that will be established and evaluated by the CEO and/or Board of Directors on an annual basis. You must be employed on the day that bonuses are paid in order to be eligible for a bonus. For calendar year 2014, the bonus will be pro-rated to your start date.

Subject to the approval of the Company’s Board of Directors, you will be granted the option to purchase shares of the Company’s common stock equal to one percent (1%) of the Company’s shares on a fully-diluted basis on the date of grant, including the Company’s employee option pool (the “Option”). The Option will be subject to the terms and conditions of the Company’s standard form of Stock Option Agreement (the “Option Agreement”) and the Company’s 2007 Stock Plan (the “Plan”). This Option shall be an incentive stock option to the extent permitted by law. The Option will be granted at an exercise price equal to the fair market value of the stock on the date of the grant and will vest 25% at the end of the first full, continuous year of employment with monthly vesting thereafter at the rate of 1/48th of the total grant. Vesting will, of course, depend on your continued employment with the Company. Please consult the Option Agreement and the Plan for further information.
During the first twelve (12) months following your start date, if your employment is terminated by the Company without Cause (as defined in the Plan), you will receive continued payment of your then-current monthly base salary, plus payment by the Company of applicable COBRA premiums for you and your eligible dependents, for a period of six (6) months following the date of termination of your employment, in accordance with the Company’s regular payroll practices.

In addition, if there is a Change of Control (as defined in the Plan) and in connection with such Change of Control or within twelve (12) months following the closing of a Change in Control (i) you are terminated by the Company or its successor without Cause (as defined in the Plan), or (ii) there is a Constructive Termination (as defined below) and you terminate your employment with the Company or its successor within six (6) months following such Constructive Termination, then one hundred percent (100%) of any then remaining unvested shares under the Option shall immediately vest and become exercisable.

As used herein, “Constructive Termination” means the occurrence of any of the following events: (i) any material diminution in your duties or responsibilities (other than in connection with your unavailability by reason of disability), provided that a mere change in title alone shall not constitute such a material diminution, (ii) a reduction of more than 10% in any one year period by the Company in your base salary (other than on account of a reduction applicable to all executive employees) or (iii) the relocation of your principal work location by more than fifty (50) miles, not agreed to by you.

By signing this offer, you represent that your employment with the Company and the performance of your duties does not and will not breach any agreement entered into by you (i.e., you have not entered into any agreements with previous employers that conflict with your obligations to the Company). Please provide us with a copy of any such agreements. You will also be required to sign an Employee Invention Assignment and Confidentiality Agreement as a condition of your employment with the Company. A copy of this agreement will be made available to you.

Moreover, you will be required to provide the Company with documents establishing your identity and right to work in the United States. Those documents must be provided to the Company within three business days of your employment start date.

We hope that this will be beginning of a long and rewarding employment relationship. However, you are not being promised any particular term of employment. You understand that your employment with the Company will be “at-will,” meaning that either you or the Company may terminate your employment relationship at any time, for any reason, with or without prior notice. The Company also has the right to change, or otherwise modify, in its sole discretion, the terms and conditions of your at-will employment, including your salary and benefits. The Company has found that an “at-will” relationship is in the interests of both the Company and its employees.

The Company reserves the right to conduct background investigations and/or reference checks on all of its potential employees, including verification of criminal, education, driving and/or employment background. Your offer of employment with Fitbit, therefore, is contingent upon a satisfactory clearance of such a background investigation and/or reference check, if any.
This offer, once accepted, constitutes the entire agreement between you and the Company with respect to the subject matter hereof and supersedes all prior offers, negotiations and agreements, if any, whether written or oral, relating to such subject matter. You acknowledge that neither the Company nor its agents have made any promise, representation or warranty whatsoever, either express or implied, written or oral, which is not contained in this agreement for the purpose of inducing you to execute the agreement, and you acknowledge that you have executed this agreement in reliance only upon such promises, representations and warranties as are contained herein.

We are very excited about having you join the Company. If you agree to the offer terms above, please sign below. If you have any questions regarding this offer, please contact Taryn Ching, HR Manager, or email . This offer shall remain open until May 1, 2014, after which, if not accepted, shall expire.

Sincerely,

/s/ James Park
James Park
Co-Founder & CEO
Fitbit, Inc.

Signed: /s/ Bill Zerella
Bill Zerella
Dated: April 26, 2014

I have read and accept the terms and condition of this offer.
OFFICE LEASE

BY AND BETWEEN

405 HOWARD, LLC

AND

FITBIT, INC.

Date: September 30, 2013

405 Howard Street
San Francisco, California
Suites 400 and 550
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**EXHIBITS**

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<td>2</td>
<td>Pre-approved Subcontractors</td>
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<td>3</td>
<td>Hardware Lab Substances</td>
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THIS OFFICE LEASE is entered into by Landlord and Tenant as described in the following Basic Lease Information on the date that is set forth for reference only in the following Basic Lease Information. Landlord and Tenant agree:

WITNESSETH:

ARTICLE 1
BASIC LEASE INFORMATION

Section 1.1 Basic Lease Information. The following terms are referred to in other provisions of the Lease. Each such reference shall incorporate the applicable Basic Lease Information. In the event of any conflict between the Basic Lease Information and the provisions of the Lease, the latter shall control.

(a) LEASE DATE: September 30, 2013.

(b) LANDLORD: 405 Howard, LLC.

(c) LANDLORD’S ADDRESS:

   c/o Langley Investment Properties, Inc.
   1211 SW Fifth Avenue, Suite 2230
   Portland, Oregon 97204
   Attention: Scott C. Langley

   with a copy at the same time to:

   The Ashforth Company
   707 Summer Street, 4th Floor
   Stamford, Connecticut 06901
   Attention: Michael Pollack, Esq.

(d) TENANT: Fitbit, Inc.

(e) TENANT’S ADDRESS:

   Prior to the Suite 400 Delivery Date:
   Fitbit, Inc.
   150 Spear Street, Suite 200
   San Francisco, CA 94105
   Attn: General Counsel

   After Lease Commencement:
   Fitbit, Inc.
   405 Howard Street
   San Francisco, CA 94105
   Attn: General Counsel

1
(f) BUILDING ADDRESS: 405 Howard Street, San Francisco, California 94105.

(g) PREMISES: As shown on Exhibit A and known as Suites 400 and 550.

(h) RENTABLE AREA OF THE PREMISES: Landlord represents that the Rentable Areas of the Premises has been measured in accordance with 1996 standards as promulgated by the Building Owners and Managers Association.
   Suite 400: 13,199 square feet; and
   Suite 550: 44,170 square feet.

(i) RENTABLE AREA OF THE BUILDING: 521,555 square feet.

(j) TERM: Beginning on the Commencement Date and expiring on the Expiration Date.

(k) COMMENCEMENT DATE: As used herein, the term “Commencement Date” shall have different meanings as applied to Suite 400 and Suite 550. The “Suite 400 Commencement Date” shall mean the earliest to occur of (i) the date that is sixty (60) days after the Suite 400 Delivery Date or (ii) the date of substantial completion of “Tenant’s Initial Alterations” (as hereinafter defined) in Suite 400 or (iii) the date of Tenant’s occupancy of Suite 400 for the conduct of business. The “Suite 550 Commencement Date” shall mean the earliest to occur of (i) the date that is three (3) months after the Suite 550 Delivery Date or (ii) the date of Tenant’s occupancy of Suite 550 for the conduct of business.

(l) DELIVERY DATE:
   Suite 400 Delivery Date: The date that is five (5) business days after the Lease Date.
   Suite 550 Delivery Date: Upon the date the following conditions have been met (i) expiration of the Lease of the existing tenant of Suite 550 (scheduled for December 31, 2013) and (ii) such tenant has vacated possession of Suite 550 and has removed its personal property, equipment and fixtures therefrom.

(m) RENT COMMENCEMENT DATE:
   Suite 400 Rent Commencement Date: Two (2) months after the Suite 400 Commencement Date.
   Suite 550 Rent Commencement Date: Two (2) months after the Suite 550 Commencement Date.
(n) **EXPIRATION DATE**: The last day of the calendar month in which the day preceding the six (6) year anniversary of the Suite 550 Commencement Date occurs.

(o) **SECURITY DEPOSIT**: $2,100,000.00, subject to the provisions of Section 23.5 hereof.

(p) **FIRST MONTH’S RENT**: $249,270.17.

(q) **MONTHLY RENT**:

- **Suite 400**: Suite 400 Rent Commencement Date –
  - Suite 550 Rent Commencement

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<tr>
<th>Date</th>
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<tr>
<td>Lease Year 1:</td>
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<td>Lease Year 2:</td>
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<td>Lease Year 5:</td>
<td>$62,353.00</td>
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<td>Lease Year 6:</td>
<td>$64,224.20</td>
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(r) **TENANT’S SHARE**: 11.00%.

(s) ** BROKER**: Avison Young and Jones Lang LaSalle.
(t) **BASE YEAR:** For Operating Expenses: The 2014 calendar year.  
For Taxes: The 2014 calendar year.

(u) **FIRST MONTHLY RENT ADJUSTMENT DATE:**  
For Operating Expenses: January 1, 2015.  
For Taxes: January 1, 2015.

(v) **TENANT IMPROVEMENT ALLOWANCE:** $1,612,490.00

Section 1.2 **Definitions**

(a) ADA: Americans with Disabilities Act of 1990, as amended, and applicable provisions, standards or regulations under local, state or federal law requiring standards for making new or existing facilities accessible to persons with disabilities. “Certified Access Specialist” shall mean a person certified as to perform inspections of places of public accommodations under applicable ADA standards.

(b) **ADDITIONAL RENT:** Any amounts that this Lease requires Tenant to pay in addition to Monthly Rent.

(c) **BUILDING:** The Orrick Building located at 405 Howard Street, San Francisco, California.

(d) **ISSUING BANK:** A commercial bank whose commercial paper, short-term debt obligations and other short-term deposits are rated at least “A-1+” or the equivalent by Standard & Poors Rating Services, Inc. (“S&P”) and Moody’s Investors Services, Inc. (“Moody’s”), and whose long-term senior unsecured deposits are rated at least “AA” or the equivalent by S&P and Moody’s.

(e) **LAND:** The Land on which the Project is located and which is described on Exhibit B.

(f) **LEASE YEAR:** The twelve (12) month period beginning on the first day of the month in which the Suite 550 Rent Commencement Date occurs and each succeeding twelve (12) month period thereafter.

(g) **LEGAL REQUIREMENTS:** Any of the following which affect the Project, Building or Premises or any part thereof: (i) all laws, orders, rules, judgments, regulations, directions, requirements, certificates, permits, policies, codes or ordinances of any governmental or quasi-governmental agency, authority, instrumentality, officer or utility, whether federal, state, county, municipal or local or any business improvement or other community district; (ii) the provisions of any and all recorded documents; and (iii) the requirements of any insurance carrier or rating organization.

(i) HAZARDOUS SUBSTANCES: Any substance which is toxic, ignitable, reactive or corrosive or which is regulated by Environmental Laws. “Hazardous Substance” includes any and all materials or substances which are defined as “hazardous waste”, “extremely hazardous waste” or a “hazardous substance” pursuant to state, federal or local governmental law. Hazardous Substance also include asbestos, polychlorinated biphenyls (“PCBs”) and petroleum products.

(j) NOTICE: Notices shall be in writing and (i) personally delivered to the offices set forth above, in which case such notice shall be deemed given on the date of delivery or the first (1st) business day thereafter if delivered other than on a business day or after 5:00 p.m. Pacific time to said offices; (ii) sent by registered or certified mail, postage prepaid, return receipt requested, in which case such notice shall be deemed given on the date shown on the receipt; or (iii) sent for next day delivery with a nationally recognized overnight courier, in which case such notice shall be deemed given on the first (1st) business day after the date such notice was delivered to or picked up by the courier. If delivery is refused or delayed by the addressee, such Notice shall be deemed given on the business day on which the first attempted delivery occurred.

Either party may add additional addresses or change its address for purposes of receiving Notices upon at least ten (10) days prior Notice of such change or addition. Tenant’s current billing contact is Meena Srinivasan.

(k) PRIME RATE: The rate of interest from time to time announced by U.S. Bank National Association (“USB”), or any successor to it, as its prime rate. If USB, or any successor to it, ceases to announce a prime rate, the Prime Rate will be a comparable interest rate designated by Landlord.

(l) PROJECT: The Land and all improvements built on the Land, including without limitation the Building, parking lot(s), parking structure, if any, walkways, driveways, fences, and landscaping.

(m) RENT: The Monthly Rent and Additional Rent.

(n) TAXES: All real and personal property taxes, school taxes, sewer rates and charges, transit taxes or other Governmental assessments or charges, general, specific, ordinary or extraordinary, foreseen or unforeseen, assessed, levied or imposed upon the Project. If at any
time during the Term the methods or standards of taxation prevailing at the date hereof shall be altered so that in lieu of, or as an addition to, or as a substitute for the whole or any part of the Taxes now levied, assessed or imposed, there shall be imposed (a) a tax, assessment, levy, imposition or charge based on the rents received (whether or not wholly or partially as a capital levy or otherwise), or (b) a license fee measured by the Rent, other tax, levy, imposition, charge or license fee; then all such taxes, assessments, levies, impositions, charges or license fees or the part thereof so measured or based, shall be deemed to be Taxes. The term “Taxes” shall not include, and Tenant shall not be liable for the payment of any of the following: (i) any tax, levy, assessment, charge or surcharge resulting from the contamination of the Project, the Building and/or the Premises by Hazardous Substances, (ii) interest or penalties for the late payment or failure to pay real property taxes, and (iii) transfer taxes payable in connection with any sale or other transfer of any interest of Landlord in the Building.

(o) TRANSFER: Any assignment or transfer of this Lease, any interest therein, or any right or privilege appurtenant thereto, whether by pledge, hypothecation, encumbrance, operation of law or otherwise; any subletting or licensing of the Premises or any portion thereof; any permission granted to any other person, party or entity to use or occupy the Premises, any portion thereof or any right or privilege appurtenant thereto; and any agreement to enter into or perform any of the foregoing. As used herein, a “Transfer” shall include a transfer of the stock or other beneficial interest of the Tenant, whether accomplished by one or more transfers, voluntarily or by operation of law.

(p) UNAVOIDABLE DELAYS: Delays resulting from acts of God, governmental restrictions or guidelines, strikes, labor disturbances, shortages of materials and supplies and from any other causes or events whatsoever beyond Landlord’s or Tenant’s reasonable control.

(q) Exhibits. The following addendum and exhibits are attached to this Lease and are made part of this Lease:

EXHIBIT A — The Premises
EXHIBIT B — Legal Description of the Land
EXHIBIT C — Rules and Regulation
EXHIBIT D — Commencement Date Agreement
EXHIBIT E — Letter of Credit Form

ARTICLE 2
AGREEMENT

Section 2.1 Lease of Premises. Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, together with the right to utilize in common with others, for ingress and egress, the common areas of the Project as described in Article 12. Nothing herein contained shall be construed to permit Tenant the use of the roof or exterior walls of the Building, of the space above or below the Premises or of any parking or other areas adjacent to the Building, except as expressly stated otherwise.
ARTICLE 3
USE

Section 3.1 General. (a) The Premises shall be used for general office purposes and for no other purpose. In addition, Tenant may use up to 5,000 square feet of the Premises, in the aggregate, for one (1) or more hardware labs for the research, testing and prototyping of Tenant’s products in its business of developing mobile software applications and accessories for use in the health and wellness industry, provided and subject to the following conditions: (i) such hardware labs shall be located at not more than four (4) separate locations in the Premises unless otherwise approved by Landlord in its sole discretion, (ii) the use of such portions of the Premises as hardware labs shall be consistent with office occupancy and shall not include any manufacturing or production or life science or chemical laboratories; (iii) the use of such portions of the Premises as hardware labs shall not include the use of any Hazardous Substances other than those normally utilized in connection with typical office occupancy or as provided below; and (iv) Tenant shall not sublease any hardware lab to any sub-tenant separate and apart from a bona fide sublease of office space where the predominant use of the subleased premises is for office purposes and the subtenant’s use of the hardware lab is ancillary to its use of the balance of the subleased premises for office purposes. Landlord and Tenant recognize that Tenant’s use of the hardware labs may include Tenant’s use of reasonable amounts of the Hazardous Substances listed on Schedule 3 attached to this Lease and Tenant shall not be considered to be in violation of the foregoing provision by virtue of the use of such Substances in quantities reasonably necessary for Tenant’s use of the hardware lab for the purposes herein described and so long as (1) Tenant’s use, storage, generation and disposition of such Substances shall be in accordance with and subject to the provisions of Section 9.3 of this Lease, and (2) all flammable Substances will be stored in a fire-proof cabinet in the hardware lab. Landlord reserves the right to require Tenant, at its expense, to take remedial measures to address any deleterious effects of the use of the Premises, or applicable portion thereof, as hardware labs, including without limitation, to address the presence of such Substances in the Premises or Building, installing adequate venting and filtration of any smoke, fumes, vapors or odors generated by the use of the Premises, or applicable portion thereof, as a hardware lab and installing one arm extraction system at each soldering station.

(b) The Premises are leased together with the appurtenances thereto, including the non-exclusive right to use the lobbies, elevators, stairways and other public portions of the Building, the non-exclusive use of any restrooms on any multi-tenant floors and the exclusive right to use any restrooms on single-tenant floors included within the Premises. Tenant shall not do, nor permit anything to be done, in or about the Premises which will in any way obstruct or interfere with the rights of other tenants of the Building, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises or the Building, or commit or suffer to be committed any waste in, on or about the Premises or the Building.
Section 3.2 Commercial Facility. The Premises will be used only as a commercial facility and not as a place of public accommodation as defined by ADA. Tenant shall not offer its goods and services to the general public at the Premises. Landlord hereby advises Tenant that the Demised Premises has not been inspected by a Certified Access Specialist.

Section 3.3 Building Name. Tenant shall not be allowed to use the name of the Building for any purpose other than as the address of the business to be conducted by Tenant in the Premises. Landlord reserves the right in its sole discretion to change the name of the Building at any time.

Section 3.4 Signs and Advertising. (a) Tenant shall not inscribe, paint, post, place, or in any manner display any sign, notice, picture, placard, poster, name or advertising matter anywhere in or about the Building or Premises at places visible (either directly or indirectly as an outline or shadow on or through a glass pane) from outside the Premises. In the event that Landlord permits any such signs or notices, upon expiration or termination of this Lease, Tenant shall, at its expense, promptly remove all such signs or advertising and shall repair any damage caused by such removal.

(b) Landlord shall provide Tenant, at Landlord's cost, one standard sign in each of the common elevator lobbies on the fourth (4th) and fifth (5th) floors of the Building.

Section 3.5 Smoking Prohibited. Tenant acknowledges that smoking is not permitted within the Project (except in areas specifically designated as smoking areas) and agrees that it will not allow smoking within the Premises by employees, invitees or visitors.

ARTICLE 4
THE PREMISES

Section 4.1 Delivery of Possession. (a) Tenant agrees to accept possession of Suite 400 in its “as-is” condition as of the Suite 400 Delivery Date, subject to the removal of any personal property therefrom, and further subject to all Building mechanical, electrical, life safety and plumbing systems serving Suite 400 (which does not include any supplemental air-conditioning systems located in Suite 400) being in good working order and Building standard window coverings in Suite 400 being in good working order. Tenant agrees to accept possession of Suite 550 in its “as-is” condition as of the Suite 550 Delivery Date, subject to the existing tenant of Suite 550 vacating possession thereof and removing its personal property therefrom and further subject to all Building mechanical, electrical and plumbing systems serving Suite 550 (which does not include any supplemental air-conditioning systems located in Suite 550) being in good working order and Building standard window coverings in Suite 550 being in good working order. Tenant acknowledges that neither Landlord nor its agents or employees have made any representations or warranties as to the suitability or fitness of the Premises for the conduct of Tenant’s business or for any other purpose, nor has Landlord or its agents or employees agreed to undertake any alterations or construct any tenant improvements to the Premises, except as expressly provided in this Lease. Tenant shall have a period of ninety (90) days after the respective Delivery Dates for Suite 400 and Suite 550 to inspect Suite 400 and Suite 550, respectively, and to provide Landlord with Notice within such ninety (90) day period.
of any respects in which Suite 400 or Suite 550 have not been delivered to Tenant in the condition required hereunder. Once the Commencement Date and Rent Commencement Date have been established, the parties shall execute and exchange an agreement ("Commencement Date Agreement") specifying the Commencement Date, Rent Commencement Date, Expiration Date and any other dates related thereto, which Agreement shall be in substantially the same form as Exhibit D. Failure to execute such an agreement shall not, however, affect Tenant’s obligations pursuant to this Lease.

(b) (i) Suite 550 is currently occupied by two (2) occupants-Uber Technologies, Inc. and Studios Architecture, Inc. In the event Landlord is unable to deliver possession of Suite 550 in the condition required under this Lease on or before April 1, 2014, as such date may be extended by delays caused or consented to by Tenant or Unavoidable Delays (herein, the “Outside Delivery Date”), then Tenant may, at its option and as its sole remedy, cancel this Lease by giving Notice to Landlord (herein, a “Cancellation Notice”) within thirty (30) days of the Outside Delivery Date (but before delivery of Suite 550 occurs), TIME OF THE ESSENCE, which Cancellation Notice shall specify a date for the cancellation of this Lease not less than ten (10) days after Landlord’s receipt of the Cancellation Notice (the “Cancellation Date”).

(ii) Should Tenant elect to cancel the Lease as herein provided, Tenant shall, as a condition to Tenant’s exercise of such cancellation right, simultaneously with the delivery of the Cancellation Notice to Landlord, pay to Landlord, in immediately available funds, the amount of any Tenant Improvement Allowance previously disbursed by Landlord. If delivery of Suite 550 does not occur by the Cancellation Date for reasons other than delays caused or consented to by Tenant or Unavoidable Delays, then this Lease shall be deemed cancelled from and after the Cancellation Date, except nothing contained herein shall be deemed to release Landlord or Tenant from any obligations accrued prior to the Cancellation Date or which by their terms survive the expiration or termination of the Term of this Lease (including without limitation, the provisions of Section 29.10 hereof). Should Tenant exercise its right to cancel this Lease as set forth herein, provided Tenant is not then in default under this Lease and timely surrenders possession of the Suite 400 to Landlord in the condition required hereunder, Landlord shall upon confirmation thereof, return to Tenant the Security Deposit and any prepaid rent provided to Landlord in accordance with this Lease.

Section 4.2 Early Entry. Tenant shall be permitted early entry into Suite 400 and Suite 550, as applicable, as of the Suite 400 Delivery Date and the Suite 550 Delivery Date, as applicable, but prior to the Suite 400 Commencement Date and the Suite 550 Commencement Date, as applicable, for the purpose of performing Tenant’s Initial Alterations, and installing its equipment, furniture and equipment. Any such early entry shall be at Tenant’s sole risk and subject to all the terms and provisions of this Lease; provided Tenant shall have no obligation to pay Monthly Rent during such early entry period with respect to any portion of the Premises as to which the applicable Rent Commencement Date has not yet occurred.
Section 4.3 Tenant Improvement Allowance.

(i) Subject to the terms and conditions hereinafter contained, Landlord agrees to contribute up to the Tenant Improvement Allowance to Alterations to be performed in the Premises by Tenant to prepare the Premises for Tenant’s occupancy (herein, “Tenant’s Initial Alterations”). Landlord hereby acknowledges and consents to the lay-out of the Premises shown on the Test-Fit attached hereto as Schedule 1, subject to Tenant submitting detailed plans and specifications for such work to Landlord for its review and approval and Tenant performing all such work in accordance with all applicable terms and conditions of this Lease. Tenant’s Initial Alterations shall be performed in accordance with all applicable terms and conditions of this Lease, including, without limitation, Articles 15 and 16 hereof and shall be based upon plans and specifications to be prepared by Tenant’s architect and approved by Landlord. The Tenant Improvement Allowance shall be applicable only to Tenant’s Initial Alterations (including the cost of architectural and engineering fees) completed prior to the twelve (12) month anniversary of the Suite 550 Delivery Date and, if not fully used by such date shall not be credited against rent or other sums due under the Lease or other Tenant’s renovations to be performed at a subsequent date. No portion of the Tenant Improvement Allowance shall be applied toward other costs including, without limitation, the cost of personal property, moving expenses, furniture, artwork, interest or late charges.

(ii) Tenant shall pay to Landlord’s managing agent, Langley Investment Properties, Inc. the “Administration Fee” set forth below as applied to the “Cost of the Work” (as hereinafter defined) for its administration and coordination of Tenant’s selected contractor’s activities with the Building in connection with Tenant’s Initial Alterations. In no event, however, shall Landlord or its managing agent be responsible for performance or warranties by Tenant’s contractors, subcontractors (of any tier), engineers or other vendors or for providing any insurance or general conditions, such as temporary light and power, HVAC, or rubbish removal services, all of which shall be provided solely by Tenant’s contractors, subcontractors, engineers or other vendors. As used herein, the “Cost of the Work” shall mean

- All architectural and engineering fees and expenses (except to the extent already part of the Test-Fit Allowance);
- The sum of all third-party costs incurred in order to construct Tenant’s Initial Alterations and all costs reasonably related thereto; and
- Permits and taxes.

The “Administration Fee” shall mean a fee to be computed relative to the Cost of the Work as follows:

- For the first $500,000: 3%;
- For the next $501,000: 2%; and
- Thereafter: 1%.

The Administration Fee shall be payable in monthly installments as the Cost of the Work is incurred. To the extent the Tenant Improvement Allowance has not yet been fully expended and is available to be disbursed (e.g., is not being held for purposes of retainage), any Administration Fee payable as above provided may, to
the extent not already reflected on such “Requisition”, be added to any Requisition received and shall be paid directly to Landlord’s managing agent out of the Tenant Improvement Allowance at the time of any “Installment Payment” hereunder (as such quoted terms are hereinafter defined). To the extent the Tenant Improvement Allowance has been fully expended or is not otherwise available to be disbursed, Tenant shall pay the Administration Fee within ten (10) days of demand, which demand(s) may be made monthly.

(iii) Provided there is not then an Event of Default under this Lease, Landlord shall contribute the Tenant Improvement Allowance to the Cost of the Work as follows:

(A) Promptly upon completion of the Tenant’s Initial Alterations in the Premises for the preceding calendar month, Tenant shall submit to Landlord:

(1) contractor’s invoices for all work done and all supplies furnished in connection with the Tenant’s Initial Alterations performed in the Premises in the preceding month;

(2) a detailed breakdown of the aggregate cost of all the Tenant’s Initial Alterations completed to date;

(3) certificates from Tenant’s architect and contractor(s) that (i) the Tenant’s Initial Alterations performed in the Premises in the preceding month have been fully completed; (ii) the Tenant’s Initial Alterations in the Premises were prosecuted in accordance with the plans and specifications previously approved by Landlord; and (iii) there are no violations or liens pending as a result of any of Tenant’s Initial Alterations;

(4) Tenant’s and its architect’s and contractor’s statements of the total Cost of the Work, the Cost of the Work expended to date and the remaining Cost of the Work yet to be incurred and paid; and

(5) Tenant’s request and approval of Landlord’s payment of the invoices submitted. If Tenant is requesting that Landlord reimburse Tenant for sums already paid by Tenant, Tenant shall also submit to Landlord evidence reasonably satisfactory to Landlord that such sums have been paid, which may include lien waivers. Such requests may include requests that Landlord reimburse Tenant for up to fifty percent (50%) of the Cost of the Work incurred by Tenant prior to the commencement of Tenant’s Initial Alterations for items such as architect’s or engineer’s fees or deposits reasonably required, if any, for the ordering of materials in connection with Tenant’s Initial Alterations notwithstanding that Tenant’s Initial Alterations have not yet commenced.

The foregoing items (1) through (5) are herein collectively called a “Requisition”.

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(iv) Within thirty (30) days of Landlord’s receipt of a Requisition for labor, services or materials, for which Landlord has not previously made an “Installment Payment” (as hereinafter defined), provided there is no Event of Default under Lease, Landlord will reimburse Tenant for sums previously paid by Tenant or, if requested by Tenant, pay directly to Tenant’s general contractor ninety percent (90%) of Landlord’s pro rata share of such Requisition, which pro rata share shall be computed by dividing the Tenant Improvement Allowance by the total Cost of the Work, as reflected in the most recent Requisition. Such payment is herein called an “Installment Payment”. The remaining ten percent (10%) of Landlord’s pro rata share of each Requisition shall be paid by Landlord, as hereinafter provided, directly to Tenant or Tenant’s general contractor as a separate and final Installment Payment upon submission of a final Requisition following completion of all the Tenant’s Initial Alterations in accordance with all applicable provisions of the Lease. Such final Installment Payment shall be paid within thirty (30) days of (A) the satisfaction of the provisions of sub-paragraph (iii) above for payment of such final Requisition, except references in said sub-paragraph (iii) to “the preceding month” shall be deemed deleted or to refer to “all Tenant’s Initial Alterations” (or words of similar import), as the context may require, and (B) the delivery to Landlord of all final governmental approvals required for all the Tenant’s Initial Alterations.

(v) In no event Landlord be required to disburse or shall Tenant be entitled to any Installment Payment either (x) as long as Tenant shall be in breach or default of any of the terms, covenants or conditions of the Lease beyond any applicable notice or cure periods, or (y) once Landlord has made Installment Payments aggregating the Tenant Improvement Allowance or (z) for any of Tenant’s Initial Alterations not completed by the date that is the twelve (12) month anniversary of the Suite 550 Delivery Date.

(vi) Any sum due or payable to any Tenant’s contractors, subcontractors, engineers or other vendors or suppliers and not required to be paid by Landlord hereunder shall be paid by Tenant at its sole cost and expense.

Section 4.4 Test-Fit Allowance. As used herein, the “Test-Fit Allowance” shall mean $8,400.00. Landlord’s architect is preparing up to two (2) Test Fits for the Premises and Landlord will pay the invoices of Landlord’s architect up to the amount of the Test-Fit Allowance for such services in accordance with such contract. The Test-Fit Allowance if not fully used shall not be credited against rent or other sums due under the Lease.

Section 4.5 (a) Construction of Tenant’s Initial Alterations. The plans and specifications for the Tenant’s Initial Alterations shall be approved by Landlord (the “TI Plans”) prior to the commencement of construction of the Tenant’s Initial Alterations by Tenant. Landlord shall deliver written notice to Tenant within fifteen (15) days after Landlord’s receipt of the TI Plans for the Premises which notice shall advise Tenant whether the submitted TI Plans are approved, or are unsatisfactory or incomplete in any respect or whether Landlord requires any additional information in order to respond to the same. Landlord shall provide a reasonably detailed explanation for any disapproval or request for additional information. If Tenant is advised that the TI Plans are unsatisfactory or incomplete in any respect or Landlord requires additional information, Tenant shall promptly revise the TI Plans in accordance with such review and submit the revised TI Plans to Landlord addressing Landlord’s response no later than five (5)
business days after Landlord delivers its notice. Landlord shall respond to any such changes, modifications or alterations addressing Landlord’s responses within five (5) business days of Landlord’s receipt thereof. Once the TI Plans are approved, no changes, modifications or alterations in the TI Plans may be made without the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed with respect to any proposed alterations that are not structural, do not affect any Building systems or areas outside the Premises. If Landlord fails to respond to a request for Landlord’s approval within the fifteen (15) day or five (5) business day periods set forth above, Tenant may send to Landlord a second notice referring to this Section 4.5(a) and advising Landlord that Landlord has failed to respond to a request for Landlord’s approval to TI Plans within the fifteen (15) day or five (5) business day periods referred to in this Section 4.5(a) and should Landlord fail to respond to Tenant’s second request in writing within five (5) business days of such second request, Landlord shall be deemed to have approved such TI Plans. Should Landlord in fact fail to respond in writing to a request for Landlord’s approval complying with the provisions hereof within five (5) business days after Landlord’s receipt of such second notice, Landlord’s approval to such TI Plans shall be deemed given.

(b) A general contractor (“Contractor”) shall be retained by Tenant to construct the Tenant’s Initial Alterations, which Contractor shall be subject to Landlord’s consent, which consent shall not be unreasonably withheld, conditioned or delayed provided that such Contractor is a California licensed contractor with a successful track record of constructing first class tenant improvements in first class office buildings, provides the insurance required by this Lease and otherwise agrees to comply with the applicable provisions of this Lease and such Contractor hires only sub-contractors previously approved by Landlord, which approval will not be unreasonably withheld, conditioned or delayed. The foregoing notwithstanding, Tenant shall be required to utilize Landlord’s designated sub-contractors for the following items of Tenant’s Initial Alterations: (i) Mechanical, Electrical and Plumbing Engineers, (ii) fire life safety contractor; (iii) Riser, cable and data management contractor; and (iv) Building Management Systems contractor re: computerized controls. Landlord shall notify Tenant within five (5) business days after Tenant’s request for consent to the Contractor selected by Tenant and such Contractor’s choice of sub-contractors. If Landlord fails to respond to a request for Landlord’s approval of a contractor or sub-contractor within five (5) business days after Tenant’s request, Tenant may send to Landlord a second notice referring to this Section 4.5(b) and advising Landlord that Landlord has failed to respond to a request for Landlord’s approval of a contractor or sub-contractor within the five (5) business day period referred to in this Section 4.5(b) and should Landlord fail to respond to Tenant’s second request in writing within three (3) business days of Landlord’s receipt of such second request, Landlord shall be deemed to have approved such contractor or sub-contractor. Should Landlord in fact fail to respond in writing to a request for Landlord’s approval of a contractor or sub-contractor complying with the provisions hereof within three (3) business days after Landlord’s receipt of such second notice, Landlord’s approval of such contractor or sub-contractor shall be deemed given. As of the Lease Date, the sub-contractors listed on Schedule 2 annexed hereto are approved to perform Alterations in the Building, which Schedule is subject to change by Landlord or its managing agent from time to time.
ARTICLE 5
MONTHLY RENT

Section 5.1 Monthly Rent. Monthly Rent shall be paid beginning on the Rent Commencement Date and throughout the Term in advance on or before the first day of each calendar month of the Term. If the Term commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, then Monthly Rent will be appropriately prorated by Landlord based on the number of days in such month. Monthly Rent and all Additional Rent will be paid to Landlord, without Notice or demand, and without deduction or offset, in lawful money of the United States of America at 405 Howard LLC – Rent, MS 310130, P.O. Box 4266, Portland, OR 97208, or to such other address as Landlord may from time to time designate in writing.

Section 5.2 Late Payments/Uncollected Funds. (a) All sums due Landlord which are past due for a period of ten (10) days or more shall bear interest on the unpaid portion from their respective due dates until paid at the rate of one and one-half percent (1 1/2%) for each month or part of a month, or if such rate under the circumstances then prevailing shall not be lawful, then at the maximum lawful rate. In addition, if Tenant fails to pay any installment of Monthly Rent or Additional Rent within ten (10) days of the date when due and payable hereunder, a late charge equal to five percent (5%) of such unpaid amount will be due and payable immediately by Tenant to Landlord. Notwithstanding the foregoing, Tenant shall not be obligated to pay the interest charge and/or late penalty fee set forth above with respect to the first time any sum is not paid within the time periods prescribed above in any twelve (12) month period. The foregoing shall be in addition to any other right or remedy which may be available to Landlord in the event of default by Tenant. The payment of such interest or late charge shall not excuse or cure any default by Tenant pursuant to this Lease.

(b) Should any check or other payment on account of Rent be returned uncollections for insufficient funds or any other reason, Tenant shall reimburse Landlord for any fees imposed by Landlord’s financial institution for the return of such check or other payment.

ARTICLE 6
ADDITIONAL RENT FOR OPERATING EXPENSES

Section 6.1 General.

(a) Whenever for any calendar year the “Operating Expenses” (as defined below) exceed the Operating Expenses for the Base Year, then, effective January 1 of such year, Tenant shall pay as Additional Rent the product of Tenant’s Share multiplied by such excess subject to the provisions of Section 6.2. The first payment of Additional Rent for increases in Operating Expenses, if any, shall be effective on the First Monthly Rent Adjustment Date set forth in Section 1.1.

(b) As used in this Lease, the term “Operating Expenses” means:

(i) All reasonable costs paid, payable, or incurred by Landlord for the management, operation, and maintenance of the Project, computed in accordance with generally
accepted accounting principles ("GAAP"), including wages, salaries, benefits and compensation employees, and payroll taxes; any gross receipts tax or excise tax levied with respect to the receipt of rent; consulting, accounting, legal, janitorial, maintenance, security, window washing and other services; management fees (not to exceed market rate management fees for comparable buildings, however in no event shall management fees exceed 5% of gross operating revenue for the Building) and costs; that part of office rent or rental value of space in the Project used or furnished by Landlord to enhance, manage, operate, and maintain the Project; reasonable allocation of costs to provide and operate free or discounted visitor parking for the Project; power, water, waste disposal, and other utilities; consumable materials and supplies, tools, and equipment; maintenance and repairs; insurance obtained with respect to the Project (other than earthquake deductibles which shall be governed by Section 6.1 (f) below); depreciation or rental on personal property and equipment used in the management, operation, or maintenance of the Project which is or should be capitalized on the books of Landlord except as set forth in subsection (ii) below; and any other costs, charges, and expenses that under generally accepted accounting principles would be regarded as management, maintenance, and operating expenses. The preceding list is for definitional purposes only and does not impose any obligation to incur such expenses or provide such services. Any services provided by Landlord or any affiliate of Landlord shall be at rates competitive with prevailing rates for comparable services and projects.

(ii) (A) The cost (amortized in accordance with GAAP) together with interest (at the actual or imputed rate that Landlord would reasonably be required to pay to finance the cost of such capital improvement) on the unamortized balance of any capital improvements that are made to the Project by Landlord (1) for the purpose of reducing operating expenses (provided that the annual anticipated savings in the component of operating expenses that such capital improvement is intended to reduce are reasonably expected to exceed the annual amortized cost of such improvement) or (2) after the Lease Date and by requirement of any governmental law, code or regulation (including without limitation the ADA and any provisions of ADA applicable to the Project or any part thereof as a result of the use, occupancy, or alteration thereof by Landlord) that was not applicable to the Project at the time it was constructed and is not as a result of special requirements for any tenant’s use of the Project or (B) The cost of any capital items to the extent provided in Section 6.1(f) below.

(c) The Operating Expenses will not include:

(i) depreciation on the Project (other than depreciation on personal property, equipment);
(ii) costs of alterations of space or other improvements made for tenants of the Project;
(iii) finders’ fees and real estate brokers’ commissions;
(iv) ground lease payments, mortgage principal or interest;
(v) items that are or should be capitalized under GAAP other than those referred to in subsection (b)(ii) above or Section 6.1(f) below;
(vi) costs of replacements to personal property and equipment for which depreciation costs are included as an operating expense;
(vii) costs of excess or additional services provided to any tenant in the Building that are directly billed to such tenants;
(viii) the cost of repairs due to casualty or condemnation that are reimbursed by third parties;
(ix) any cost due to Landlord’s breach of this Lease;
(x) all costs, including legal fees, relating to activities for the solicitation and execution of leases of space in the Building or disputes with other tenants of the Building;
(xi) any legal fees incurred by Landlord in enforcing its rights under other leases for space in the Project;
(xii) fines, penalties or interest resulting from late payment of Taxes or Operating Expenses, provided however Operating Expenses shall include fines, penalties or interest that are incurred with respect to Operating Expenses which Landlord disputed in good faith;
(xiii) advertising and promotional expenses;
(xiv) Landlord’s charitable and political contributions;
(xv) costs of purchasing or leasing major sculptures, paintings or other artwork, except as may be required to comply with governmental restrictions affecting the Building or Project;
(xvi) penalties or fines incurred by Landlord due to a violation by Landlord of any legal requirement, building codes, or any other governmental rule or requirement (other than the underlying cost of such compliance itself) and penalties or fines resulting from the negligence or willful misconduct of Landlord or its employees, agents or contractors;
(xvii) reserves;
(xviii) costs of selling, financing or refinancing the Building;
(xix) The cost of operating any commercial concession which is operated by Landlord at the Building;
(xx) Replacement of the structural portions of the roof or exterior walls, foundations, load bearing walls or base building, except as provided in Section 6.1(f) below;
(xxi) Landlord’s general overhead expenses not related to the Building;

(xxii) Costs of abatement or remediation of Hazardous Substances brought upon, stored, used or disposed of in or about the Building by Landlord or by a particular tenant or occupant of the Building, except for amounts used in the ordinary course of operating the Building;

(xxiii) Sums (other than management fees, it being agreed that the management fees included in Operating Expenses are as described in Section 6.1(b)(i) above) paid to subsidiaries or other affiliates of Landlord for services on or to the Building and/or Premises, but only to the extent that the costs of such services exceed the market rate cost for such services rendered by unrelated persons or entities of similar skill, competence and experience; and

(xxiv) Costs incurred for repairs, replacements or restoration due to damage caused by earthquake to the extent within the deductible under Landlord’s earthquake insurance policy, except as provided under the provisions of Section 6.1(f) below.

If, in any calendar year following the Base Year, as defined hereinbelow (a “Subsequent Year”), a new service or category of expense (e.g., earthquake insurance, concierge services; entry card systems), is included in Operating Expenses which was not included in the Base Year Operating Expenses, then the cost of such new service or category of expense shall be added to the Base Year Operating Expenses for purposes of determining the Additional Rent payable under this Article 6 for such Subsequent Year. During each Subsequent Year, the same amount shall continue to be included in the computation of Operating Expenses for the Base Year, with the Subsequent Year’s Operating Expenses including the original charge and any increase in the cost of such new service or category of expense in such Subsequent Year’s Operating Expenses. However, if in any Subsequent Year thereafter, such new service or category of expense is not included in Operating Expenses, no such addition shall be made to Base Year Operating Expenses

Conversely, as reasonably determined by Landlord, when a service or category of expense that was originally included in the Base Year Operating Expenses is, in any Subsequent Year, no longer included in Operating Expenses, then the cost incurred for such service or category of expense in the Base Year shall be deleted from the Base Year Operating Expenses for purposes of determining the Additional Rent payable under this Article 6 for such Subsequent Year. The same amount shall continue to be deleted from the Base Year Operating Expenses for each Subsequent Year thereafter that the service or category of expense is not included. However, if such service or category of expense is again included in the
Operating Expenses for any Subsequent Year, then the amount of said service or category of expense originally included in the Base Year Operating Expenses shall again be added back to the Base Year Operating Expenses.

(d) If during any calendar year at least ninety-five percent (95%) of the Project is not provided with full Building standard services or is not at least ninety-five percent (95%) occupied, in determining Operating Expenses Landlord shall compute all variable Operating Expenses for such calendar year as though ninety-five percent (95%) of the Project were provided with full Building standard services and were ninety-five percent (95%) occupied. For purposes of this Section, the term variable Operating Expenses shall mean any Operating Expense (or portion thereof) that increases or decreases with the level of occupancy of the Project. In the event that Operating Expenses do not include any specific costs billed to or otherwise incurred for the particular benefit of specific tenants of the Project, Landlord shall have the right to increase Operating Expenses by an amount equal to the cost of providing standard services similar to the services for which such excluded specific costs were billed or incurred.

(e) Tenant acknowledges that Landlord has not made any representation or given Tenant any assurances that any estimate of Operating Expenses will equal or approximate the actual Operating Expenses for any calendar year or partial calendar year during the Term.

(f) The costs for repairs, or replacements, or restoration necessitated due to damage caused by earthquakes, whether or not such costs are to be capitalized under GAAP, shall be included within Operating Expenses to the extent actually incurred by Landlord in order to perform and complete such repairs, replacements and restoration and within the deductible under Landlord’s policy of earthquake insurance, but shall only be included on an amortized basis over a one hundred twenty (120) month period with interest at a fixed rate of eight percent (8%) per annum, provided however no such costs shall be included for the purpose of determining Tenant’s Base Year Operating Expenses, including Base Year Operating Expenses for any renewal term, but the foregoing shall not relieve Tenant from the obligation to pay the portion of such costs that may be amortized during the Base Year occurring during any renewal term. Should the Term of this Lease terminate or expire, including without limitation as a result of Tenant’s exercise of its right to terminate this Lease under Article 19 of this Lease (but other than as a result of Tenant’s default under the provisions of Article 26 of this Lease), before any such costs are fully amortized, Tenant shall not be responsible for any portion of such costs which are to be amortized after the expiration or termination of the Term of this Lease.

Section 6.2 Estimated Payments.

(a) Commencing with the calendar year in which the First Monthly Rent Adjustment Date occurs, Landlord will give Tenant a statement of the estimated Operating Expense increase, if any, for such calendar year. On or before the first day of each month during each calendar year, Tenant shall pay to Landlord Additional Rent monthly, in advance, an amount equal to 1/12 of the product of Tenant’s Share multiplied by Landlord’s estimate of the excess of the Operating Expenses for such year over the Operating Expenses for the Base Year. In the month
in each calendar year in which Tenant first makes a payment based upon such estimate, if not January 1st of such year, Tenant shall pay to Landlord or in the case of an overpayment, Landlord shall credit Tenant, for each month which has elapsed since January 1st the difference, if any, between the Additional Rent based upon such estimate of Operating Expenses and the Additional Rent for Operating Expenses actually paid.

(b) If at any time or times it reasonably appears to Landlord that the actual Operating Expenses for any calendar year will vary substantially from the estimated Operating Expenses for such calendar year, Landlord may deliver to Tenant a revised statement of the estimated Operating Expense increase for such calendar year, and subsequent Additional Rent payments by Tenant in such calendar year will be based upon such revised estimated Operating Expense increase.

Section 6.3 Annual Settlement. Within one hundred twenty (120) days after the end of each calendar year or as soon thereafter as reasonably practicable, Landlord will deliver to Tenant a statement setting forth Tenant’s Share of actual amounts payable under this Article 6 for the prior calendar year. Such statement will be final and binding upon Landlord and Tenant unless Tenant objects to it in writing to Landlord within one hundred twenty (120) days after delivery to Tenant. If such statement shows an amount owing by Tenant that is less than the estimated payments previously made by Tenant for such calendar year, the excess will be held by Landlord and credited against the next payment of Rent; however, if the Term has ended and Tenant was not in default at its end, Landlord will refund the excess to Tenant. Subject to Tenant’s right to object to such statement for the one hundred twenty (120) day period referred to above, acceptance or resolution of the first such statement shall constitute acceptance of the Operating Expense amount for the Base Year. If such statement shows an amount owing by Tenant that is more than the estimated payments previously made by Tenant for such calendar year, Tenant will pay the deficiency to Landlord within thirty (30) days after the delivery of such statement. Tenant may review Landlord’s records of the Operating Expenses, at Tenant’s sole cost and expense, at the place Landlord normally maintains such records during Landlord’s normal business hours upon reasonable advance Notice. If Tenant elects to audit the Annual Statement, and such audit reveals an overstatement by Landlord of six (6%) or more, of the Building Operating Expenses for such year, then Landlord shall pay the reasonable out-of-pocket cost incurred and paid by Tenant for such audit.

Section 6.4 Final Proration. If this Lease ends on a day other than the last day of a calendar year, the amount of Additional Rent payable by Tenant applicable to the calendar year in which this Lease ends will be calculated on the basis of the number of days of the Term falling within such calendar year. Tenant’s obligation to pay any deficiency between estimated increase in Operating Expenses and actual increase in Operating Expenses or Landlord’s obligation to refund any overage shall survive the expiration or other termination of this Lease.

Section 6.5 Decrease in Operating Expenses. Notwithstanding anything contained in this Article, the Monthly Rent payable by Tenant shall in no event be less than the Monthly Rent specified in Section 1.1.
ARTICLE 7
ADDITIONAL RENT FOR TAXES

Section 7.1 Calculation. Tenant shall pay, as Additional Rent, an amount equal to Tenant’s Share of the excess of Taxes due for each calendar year of the Term over the amount of Taxes due with respect to the Base Year for Taxes. Additional Rent on account of increases in Taxes shall be payable separately in accordance with the provisions of Section 7.4.

Section 7.2 Adjustment of Taxes. If in the Base Year and/or any subsequent tax year the Project is less than fully assessed, then the Taxes for such year(s) shall be appropriately adjusted to reflect what the Taxes for such year(s) would have been had the Project been fully assessed. In the event that there are tenants in the Building from time to time that are entitled to exemptions from Taxes, Taxes for such year(s) shall be appropriately adjusted to reflect the full assessment. Tenant shall only be responsible for Tenant’s Share of such Taxes if Landlord is required to pay the same.

Section 7.3 Tax Appeal. If, by virtue of any application or proceeding brought by or on behalf of Landlord, there shall be a reduction of the assessed valuation of the Project for any year, including the Base Year, which affects the Taxes, or part thereof, for which Additional Rent has been paid by Tenant pursuant to this Article, such Additional Rent payment shall be recomputed on the basis of any such reduction and Landlord will credit against the next accruing installment of Monthly Rent due under this Lease, after receipt by Landlord of a tax refund or credit, any sums paid by Tenant in excess of the recomputed amounts, less a sum equal to Tenant’s Share of all costs, expenses, and fees, including reasonable attorney’s fees incurred by Landlord in connection with such application or proceeding.

Section 7.4 Estimated Payments and Annual Settlement. Commencing with the calendar year in which the First Monthly Rent Adjustment Date occurs, Landlord will give Tenant a statement of the estimated Additional Rent for increases in Taxes for such calendar year. On or before the first day of each month during each such calendar year, Tenant shall pay to Landlord Additional Rent of one-twelfth (1/12) of the product of Tenant’s Share of such estimated increase. In the month in each calendar year in which Tenant first makes a payment based upon such estimate, if not January 1st of such year, Tenant shall pay to Landlord for each month which has elapsed since January 1st the difference, if any, between the Additional Rent based upon such estimate and the Additional Rent for Taxes actually paid. After the end of each calendar year, there shall be a reconciliation of the Additional Rent for Taxes actually due and the total of estimated payments for such Additional Rent, as provided in Section 6.3.

Section 7.5 Final Proration. Any Additional Rent payable pursuant to this Article for any partial year shall be adjusted in proportion to the number of days in such partial year during which this Lease is in effect. The obligation of Tenant with respect to any Additional Rent pursuant to this Article applicable to the last fiscal or calendar year of the Term shall survive the expiration or termination of this Lease.

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Section 7.6 Decrease in Taxes. Notwithstanding anything contained in this Article, the Monthly Rent payable by Tenant shall in no event be less than the Monthly Rent specified in Section 1.1.

Section 7.7 Dispute Resolution. Any dispute regarding the provisions of this Article shall be resolved by arbitration as provided in Article 28.

ARTICLE 8
INSURANCE

Section 8.1 Landlord’s Insurance. At all times during the Term, Landlord will carry insurance coverages and amounts reasonably determined by Landlord, based on coverages carried by prudent owners of comparable buildings in the vicinity of the Project.

Section 8.2 Certain Insurance Risks. Tenant will not do or permit to be done any act or thing upon the Premises or the Project which would jeopardize or be in conflict with casualty insurance policies covering the Project or increase the rate of fire or any other insurance applicable to the Project.

Section 8.3 Tenant’s Insurance.
(a) During the entire Term, and for so long thereafter as Tenant shall occupy any portion of the Premises, Tenant shall keep in full force and effect, at its own expense, a policy or policies of:

   (i) Commercial General Liability insurance, in occurrence form, covering bodily injury or death to persons and damage to or destruction of property, and including contractual liability coverage for Tenant’s indemnity obligations required by this Lease to afford protection of not less than $2,000,000 per occurrence and $2,000,000 combined single limit in the aggregate for any one accident.

   (ii) Worker’s Compensation insurance as required by all state and/or federal laws.

(b) Such policies will be maintained with companies having a “General Policyholders Rating” of at least A:IX as set forth in the most current issue of “Best’s Insurance Guide,” and will be written as primary policy coverage and not contributing with, or in excess of, any coverage which Landlord shall carry. Tenant shall have the right to provide the coverages required herein under blanket policies provided that the coverage afforded Landlord shall not be diminished by reason thereof. No more frequently than once every thirty-six (36) months, Landlord shall have the right to review the provisions of this Article and to require reasonable changes in the amounts or types of insurance, or both, as it may deem reasonably necessary in order to adequately protect its interests.

Section 8.4 Certificates of Insurance. Tenant shall, prior to the Commencement Date, cause to be delivered to Landlord an original certificate of insurance providing a minimum of thirty (30) days prior notice of cancellation or reduction in coverage. Renewal certificates shall
be furnished to Landlord at least thirty (30) days prior to the expiration date of each policy. All such certificates shall indicate that Landlord, Landlord’s managing agent and such additional parties as Landlord shall designate are additional insureds with respect to the Commercial General Liability coverage.

Section 8.5 Waiver of Subrogation. All property insurance policies carried by either party shall contain a waiver by the insurer of any rights of subrogation to any cause of action (including negligent acts) against the Tenant or Landlord (as the case may be) and their officers, directors, and employees. Further, each party waives any claim or cause of action against the other party hereto arising from any loss or damage to property which is covered by such insurance or which could be covered by such insurance if either party self-insures but only insofar as such party is compensated by such insurance for such loss or damage.

Section 8.6 Tenant’s Property. All furnishings, fixtures, equipment and property of every kind and description of Tenant and of persons claiming by or through Tenant which may be on the Premises shall be at the sole risk and hazard of Tenant and no part of loss or damage thereto for whatever cause is to be charged to or borne by Landlord.

ARTICLE 9
REQUIREMENTS OF LAW AND ENVIRONMENTAL HAZARDS

Section 9.1 General. (a) Landlord shall be responsible for all costs to cause the restrooms and common areas of the Building serving the Premises to comply with all Legal Requirements, including the ADA, as of the applicable Delivery Date. At its sole cost and expense, Tenant shall promptly comply with all Legal Requirements now in force or in force after the Delivery Date relating to the condition, use, or occupancy of the Premises, excluding requirements of structural changes to the Premises or Building, unless such structural changes are required by the unique nature of Tenant’s use or occupancy (including without limitation, the hardware lab referred to in Section 3.1 of this Lease), Tenant’s employee capacity or proposed non-Building standard Alterations. Tenant shall participate in all Building practice fire drills and Building evacuations and shall prepare and maintain a Fire and Life Safety Plan for its employees and guests.

(b) In the event that Tenant’s employee capacity or any non-Building standard Alteration proposed to be performed by Tenant or any proposed use of the Premises, or any portion thereof, for any purpose other than office use (whether or not expressly permitted under this Lease or consented to by Landlord and including without limitation, the hardware lab referred to in Section 3.1 of this Lease) shall trigger any Legal Requirement that any other repair or Alteration be performed in or to the Premises, Building or Project (herein, the “Triggered Requirement”), then Tenant, at its sole cost and expense, shall comply with the Triggered Requirement and deliver to Landlord reasonably satisfactory evidence thereof.

Section 9.2 Americans with Disabilities Act. Tenant shall be responsible for all modifications to the Premises required for compliance with ADA.
Section 9.3 Environmental Hazards. Tenant shall not cause or permit any Hazardous Substances to be used, stored, generated or disposed of in, on or about the Land, Building or Premises by Tenant, its agents, employees, contractors or invitees, except for such Hazardous Substances as are normally utilized in connection with the use permitted by this Lease and then only in strict compliance with all applicable Environmental Laws. Any such Hazardous Substances permitted on the Premises, and all containers therefor, shall be used, kept, stored and disposed of in a manner that complies with all Environmental Laws. Tenant shall indemnify and hold harmless the Landlord from any and all claims, damages, fines, judgments, penalties, costs, expenses or liabilities (including, without limitation, any and all sums paid for settlement of claims, attorneys’ fees, consultant and expert fees) arising during or after the Term from or in connection with the use, storage, generation or disposal of Hazardous Substances in, on or about the Land, Building or Premises by Tenant, Tenant’s agents, employees, contractors or invitees. Landlord shall indemnify and hold harmless the Tenant from any and all claims, damages, fines, judgments, penalties, costs, expenses or liabilities (including, without limitation, any and all sums paid for settlement of claims, attorneys’ fees, consultant and expert fees) in connection with the use, storage, generation or disposal of Hazardous Substances in, on or about the Land, Building or Premises by Landlord, Landlord’s agents, employees, contractors or invitees. Tenant shall have no liability or responsibility for any remediation costs and/or fees arising from the use, storage, generation or disposal of Hazardous Substances in, on or about the Land, Building or Premises not otherwise caused by Tenant or its agents, employees, contractors or invitees. Landlord represents to Tenant that (1) to Landlord has received no written notice that there are any environmental conditions affecting the Premises in violation of Environmental Laws, and (2) to the best of Landlord’s knowledge, there is no asbestos or asbestos-containing materials in the Premises.

ARTICLE 10
ASSIGNMENT AND SUBLETTING

Section 10.1 Consent Required.

(a) Except as provided in Section 10.4, Tenant shall not enter into or agree to any Transfer without in each case first obtaining the written consent of Landlord in accordance with the provisions of this Article. Any Transfer without such consent shall be voidable by Landlord, at its sole option and discretion, and shall constitute a default under this Lease. Any consent to any Transfer which may be given by Landlord shall not constitute a waiver of the provisions of this Article or a release of Tenant from the full performance of the covenants herein contained.

(b) Upon obtaining a proposed assignee, subtenant or transferee upon terms satisfactory to Tenant, Tenant shall submit to Landlord: (i) a copy of the fully executed proposed assignment or sublease or other instrument of Transfer; (ii) a description of the nature and character of the business of the proposed assignee or subtenant or transferee; (iii) such financial information as Landlord may reasonably request, including financial statements, either audited independently or signed by an authorized officer or principal, for the two (2) most recent completed fiscal years of the proposed subtenant or assignee or transferee (financial statements furnished to Landlord which are not independently audited must be in accordance with GAAP and must include all four (4) GAAP financial statements); and (iv) such other reasonably
available information as Landlord may request. Upon receipt of the items set forth above, Landlord shall have thirty (30) days to (i) elect to recapture the Premises or portion thereof described in the Tenant’s notice in accordance with Section 10.1(d) below, (ii) consent to the proposed Transfer as provided in the remainder of this Article 10, (iii) not consent to the proposed Transfer (iv) or request additional information with respect to such Transfer. Should Landlord elect not to consent to the proposed Transfer, Landlord shall provide in writing its reasons for withholding such consent. If Landlord fails to respond to a request for Landlord’s consent to a Transfer complying with the provisions hereof within thirty (30) days of Landlord’s receipt of the last of the items completing such request, Tenant may send to Landlord a second notice referring to this Section 10.01(b) and advising Landlord that Landlord has failed to respond to a request for Landlord’s consent within the thirty (30) day period referred to in this Section 10.01(b), and should Landlord fail to respond to Tenant’s second request in writing within seven (7) business days of such second request, Landlord shall be deemed to have consented to such Transfer request. Should Landlord in fact fail to respond in writing to a request for Landlord’s consent complying with the provisions hereof such second request within seven (7) business days after Landlord’s receipt of such second notice, Landlord’s consent to such Transfer shall be deemed given.

(c) With respect to any request by Tenant for consent from Landlord to any document, Tenant shall submit simultaneously with any information required hereunder a payment of $1,000.00 as a non-refundable fee for the processing of Tenant’s request.

(d) Landlord shall have the option, to be exercised by giving Notice to Tenant no later than thirty (30) days after receipt by Landlord of all of the information required in the previous paragraph, to cancel and terminate this Lease as of the date proposed by Tenant for the commencement of such assignment or subletting, either (i) in its entirety, in the case of an assignment or a sublease of seventy-five (75%) percent or more of the total area of the Premises; (ii) that portion of the Premises that Tenant desires to sublet, as well as the balance of the Premises not previously sublet in the case of any sublease which, together with all other subleases then in effect, totals seventy-five (75%) percent or more of the total area of the Premises for the remainder of the Term; or (iii) in the case of any other sublease, only as to that portion of the Premises that Tenant desires to sublet. The foregoing notwithstanding, Landlord’s option to cancel and terminate the Lease set forth above shall not apply to one or more proposed sublease(s) (herein, each a “Tenant Permitted Sublease”), which when taken together, do not aggregate more than thirty-five percent (35%) of the rentable area of the Premises, provided each such sublease expires not later than forty-eight (48) months after the Suite 550 Commencement Date. Such subleases shall nevertheless remain subject to Landlord’s consent and the remainder of the provisions of this Article 10.

(e) If Landlord does not exercise its options contained in sub-paragraph (d) above within said thirty (30) day period or said option do not apply, its consent to any such proposed Transfer shall not be withheld or delayed provided that it shall be deemed reasonable for Landlord to withhold its consent (i) if the proposed assignee or subtenant’s use and character are not in Landlord’s reasonable opinion in keeping with the character of the Building; (ii) if Landlord has not obtained Landlord’s mortgagee’s consent to such Transfer, if required, provided Landlord acknowledges that mortgagee’s consent shall not be required for any Tenant Permitted
Sublease; (iii) if Landlord has available for rent comparable or similar space in the Building, Tenant or has solicited other tenants or occupants of the Building or is subleasing or assigning to same; (iv) no Transfer shall be to a person or entity which has a financial standing, is of a character, is engaged in business, is of a reputation, or proposes to use any part of the Premises in a manner, not in keeping with the standards of a first-class office building; (v) such Transfer does not expressly provide that it is subject to all of the obligations of Tenant pursuant to Lease (other than those specific economic and business terms (e.g., rent, term) that are specifically applicable to such sublease and/or assignment) and that there shall be no further Transfer without such further Transfer again being subject to the provisions of this Article 10; (vi) any such Transfer shall result in there being more than five (5) occupants other than Tenant in the Premises; (vii) the proposed subtenant or assignee or transferee shall not be a person then negotiating with Landlord for the rental of any space in the Building; and (viii) the proposed subtenant or assignee or transferee is a governmental agency that, in Landlord’s reasonable judgment, is likely to cause public assembly or “walk-in” traffic not consistent with class “A” office use.

As a condition of Landlord’s consent, Tenant shall require its subtenant or assignee, as the case may be, to obtain and maintain throughout the term of any such sublease or assignment the same insurance coverage that Tenant is required to maintain pursuant to Article 8, including providing certificates verifying such coverage and naming Landlord and its managing agent and such other persons or entities as Landlord may designate as additional insureds and to waive subrogation against the Landlord. Landlord’s consent to any assignment or sublease, if given, shall be evidenced only in a written agreement provided by Landlord and signed by Landlord, Tenant and its assignee or subtenant, as the case may be.

Section 10.2 Tenant’s Continued Liability. If this Lease shall be assigned, or if the Premises or any part thereof shall be sublet or occupied by any person or persons other than Tenant, Tenant shall continue to be liable for the performance of all the provisions of this Lease. Landlord may, after default by Tenant, collect rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved, but no such assignment, subletting, occupancy or collection of Rent shall be deemed a waiver of the covenants in this Article 10, nor shall it be deemed acceptance of the assignee, subtenant or occupant as a tenant, or a release of Tenant from the full performance by Tenant of all the terms, conditions and covenants of this Lease.

Section 10.3 Sublease Premium. Tenant shall pay Landlord, as Additional Rent, fifty (50%) percent of the Sublease Premium derived from any Transfer as and when received, except in the event of a Transfer pursuant to Section 10.4. “Sublease Premium” shall mean all rent, additional rent, and/or other monies, property, and other consideration of every kind whatsoever received by Tenant from the subtenant, assignee or transferee for, or by reason of, the Transfer (including all amounts received by Tenant for, or attributable to, any personal property included with any such Transfer, less: (a) commissions actually paid by Tenant to a licensed real estate broker to list and procure the sublease or assignment, amortized over the term of the sublease or assignment, commencing with the date on which the sublease or assignment term commences; (b) the actual cost of leasehold improvements undertaken by Tenant (subject to Landlord’s consent as provided in this Lease) solely to prepare the subleased space for the subtenant or the Premises for the assignee, but amortized over the term of the Transfer) commencing with the
Section 10.4 Affiliate Transfer. Tenant may enter into a Transfer without the Landlord’s consent but with not less than (10) business days prior Notice to Landlord, to an Affiliate, provided that such Transfer is not for the purpose of avoiding liability pursuant to this Lease and that the net worth of its assignee or transferee is at least equal to the net worth of Tenant. Tenant shall provide Landlord with a fully executed instrument of Transfer at least ten (10) business days prior to the effective date of such Transfer. "Affiliate" of Tenant means a person or entity “controlling,” “controlled” by or under common “control” with Tenant, including without limitation any subsidiary or parent company of Tenant. The words “controlling,” “controlled” and “control” shall have the meanings given them under the Securities Exchange Act of 1934, as amended. Landlord shall not have any right to participate in the profit or terminate this Lease in connection with a sublease or assignment to an Affiliate in compliance with the provisions of this Section. For purposes of this Section 10.4, the following transactions shall also be deemed to be transactions with an "Affiliate" (a) an assignment of this Lease or a subletting of all or any portion of the Premises to (i) a corporation resulting from the merger, consolidation or reorganization of Tenant or Tenant’s parent corporation with another corporation, or (ii) to any entity that acquires all of the assets of Tenant (provided this Lease shall not then consist of all or substantially all of the assets of Tenant), (b) a transfer or issuance of shares of Tenant in connection with any financing provided to or investment made in Tenant or in conjunction with any merger where the acquiring company acquires all of the shares of Tenant, or (c) the issuance of shares of Tenant on any national securities exchange (as defined in the Securities Exchange Act of 1934, as amended) or (d) the shareholders of Tenant transferring the shares of Tenant which they hold to each other, to their immediately family members, or to any trust or other estate planning vehicle, or selling or trading the shares of Tenant on any national securities exchange (as defined in the Securities Exchange Act of 1934, as amended). Any such assignment, sublease or transfer under this Section 10.4 shall nevertheless comply with the remaining terms and conditions set forth in this Article 10 and shall be entered into for a legitimate business purpose and not to evade or avoid liability or Tenant’s obligations under this Lease.

Section 10.5 Lease Termination. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies.

Section 10.6 ERISA and UBTI Restrictions. Notwithstanding anything to the contrary contained in this Article 10, no assignment or subletting by Tenant nor any other transfer or vesting of Tenant’s interest hereunder (whether by merger, operation of law or otherwise) shall be permitted if:

(a) Landlord, or any person designated by Landlord as having an interest therein, directly or indirectly, controls, is controlled by, or is under common control with (i) the proposed
assignee, sublessee or successor-in-interest of Tenant; or (ii) any person which, directly or indirectly, controls, is controlled by or is under common control with, the proposed assignee, sublessee or successor-in-interest of Tenant;

(b) the proposed assignment or sublease (i) provides for a rental or other payments for the leasing, use, occupancy or utilization of all or any portion of the Premises based, in whole or in part, on the income or profits derived by any person from the property so leased, used, occupied or utilized other than an amount based on a fixed percentage or percentages of gross receipts or sales, or (ii) does not provide that such assignee or subtenant shall not enter into any lease, sublease, license, concession or other agreement for the use, occupancy or utilization of all or any portion of the Premises which provides for a rental or other payment for such use, occupancy or utilization based, in whole or in part, on the income or profits derived by any person from the property so leased, used, occupied or utilized other than an amount based on a fixed percentage or percentages of gross receipts or sales;

(c) in the reasonable opinion of Landlord and Landlord’s counsel, such proposed assignment, subletting or other transfer or vesting of Tenant’s interest hereunder (whether by merger, operation at law or otherwise) will (i) cause a violation of the Employee Retirement Income Security Act of 1974 by Landlord, or by any person which, directly or indirectly, controls, is controlled by, or is under common control with, Landlord or any person who controls Landlord; or (ii) result or may in the future result in Landlord, or any person which, directly or indirectly, has an interest in Landlord, receiving “unrelated business taxable income” (as defined in the Internal Revenue Code).

Section 10.7 Potential Sublease of Additional Space by Tenant from Orrick, Herrington and Sutcliffe, LLP. Landlord and Tenant acknowledge that Tenant may elect to enter into negotiations for the sublease of approximately eight thousand (8,000) rentable square feet on the 4th floor of the Building (the “Orrick Sublease Space”) from Orrick Herrington and Sutcliffe, LLC (“Orrick”). Such sublease (the “Orrick Sublease”) shall be subject to Landlord’s approval as provided in the lease in effect between Landlord and Orrick (herein, the “Orrick Lease”) but Landlord agrees it will not withhold its consent to the Orrick Sublease on the basis set forth in sub-section 10.1 (e)(iii) of this Lease should the Orrick Lease contain a similar provision. Landlord further agrees it does not object to Tenant, at its sole cost and expense, constructing a staircase (the “Staircase”) from the Premises to the Orrick Sublease Space, provided (i) Orrick consents to the construction of such Staircase, (ii) Tenant complies with the provisions of Article 15 below with respect to the construction of the Staircase and (iii) Tenant posts security satisfactory to Landlord to provide for the removal of such Staircase at the expiration of the term of the Orrick Sublease, which security shall not be less than 150% of the current cost estimated by Landlord to remove the Staircase and perform necessary restoration work, which cost is to be escalated for inflation at the rate of 3% per year on a compounded basis.
ARTICLE 11
RULES AND REGULATIONS

Tenant and its employees, agents, licensees, and visitors will at all times observe faithfully, and comply strictly with, the rules and regulations set forth in Exhibit C. Landlord may from time to time reasonably amend, delete, or modify existing rules and regulations, or adopt reasonable new rules and regulations so long as Tenant’s rights under this Lease are not materially and adversely affected or materially and adversely impaired. In the event of any breach of any rules or regulations, Landlord will have all remedies that this Lease provides for default by Tenant, and in addition to any remedies available at law or in equity, including the right to enjoin any breach of such rules and regulations. Landlord will not be liable to Tenant for violation of such rules and regulations by any other tenant, its employees, agents, visitors, or licensees or any other person. In the event of any conflict between the provisions of this Lease and the rules and regulations, the provisions of this Lease will govern.

ARTICLE 12
COMMON AREAS

As used in this Lease, the term “common areas” means the hallways, entryways, stairs, lobbies, elevators, driveways, walkways, terraces, docks, loading areas, restrooms, trash facilities, and all other areas and facilities in the Project that are provided and designated from time to time by Landlord for the general nonexclusive use and convenience of Landlord, tenants of the Project, their employees, invitees, licensees, and other visitors. Without advance Notice to Tenant, but without any liability to Tenant in any respect (provided Landlord will take no action permitted under this Article in such a manner as to materially impair or adversely affect Tenant’s substantial benefit and enjoyment of the Premises or access thereto), and, except in the case of an emergency, Landlord will provide Tenant’s representative in the Premises with reasonable advance notice (which notice may be telephonic, by email or by posting in the Building), of any such action which will adversely affect Tenant, Landlord shall have the right to:

(a) Close off any of the common areas to whatever extent required in the opinion of Landlord to prevent a dedication of any of the common areas or the accrual of any rights by any person or the public to the common areas;

(b) Temporarily close any of the common areas for maintenance, alteration, or improvement purposes; and

(c) Change the size, use, shape, or nature of any such common areas, including erecting additional buildings on the common areas, expanding the existing Building or other buildings to cover a portion of the common areas, converting common areas to a portion of the Building or other buildings, or converting any portion of the Building (excluding the Premises) or other buildings to common areas. Upon erection of any additional buildings or change in common areas, the portion of the Project upon which buildings or structures have been erected will no longer be deemed to be a part of the common areas. In the event of any such changes in the size or use of the Building or common areas of the Building or Project, Landlord will make an appropriate adjustment in the rentable area of the Building or the Building’s pro rata share of exterior common areas of the Project, as appropriate, and a corresponding adjustment to Tenant’s Share; provided however, in no event shall Tenant’s Share increase as a result thereof.
ARTICLE 13
LANDLORD’S SERVICES

Section 13.1 Landlord’s Repair and Maintenance. Landlord will as a cost of operation maintain, repair and restore the common areas of the Project and public restrooms, the exterior windows in the Building, the mechanical, plumbing and electrical equipment serving the Building, and the structure of the Building (including, but not limited to, slabs, foundations and load bearing walls) in reasonably good order and condition. Such costs shall be included in Operating Expenses as and to the extent provided in Article 6 hereof. Any damage occasioned by Tenant (or Tenant’s employees, agents, contractors, licensees, invitees, customers or clients) shall be repaired by Landlord at Tenant’s expense. Tenant agrees to notify Landlord of necessity for any repairs of which Tenant may have knowledge and for which Landlord may be responsible under the provisions of this Section.

Section 13.2 Landlord’s Other Services. Landlord shall furnish the Premises with the following services:

(a) Electricity sufficient to provide power for “normal office use” as reasonably determined by Landlord which is defined as electrical power sufficient for Building standard lighting and low wattage office equipment, and excluding electrical power required for electronic data processing equipment, computer rooms, special lighting in excess of Building standard lighting, or any other item of electrical equipment which (individually) consumes more than 1.8 kilowatts at rated capacity or which requires a voltage other than 120 volts single phase. If Tenant installs equipment requiring power in excess of that required for normal office use as determined by Landlord, Tenant shall pay to Landlord upon billing for the cost of such excess power as Additional Rent, together with the cost of installing any additional risers, submeters or other facilities that may be necessary to furnish and/or measure the use of such excess power to the Premises. Tenant shall notify Landlord in writing of any need for any excess power usage. If Tenant fails to deliver such notice to Landlord, such excess power usage shall be deemed to have commenced on the first day of occupancy of the Premises by Tenant.

(b) Heat, ventilation, and air conditioning (HVAC) to the extent reasonably required to provide a standard of comfort customary in other comparable buildings in the area (“Building Standard HVAC”), during reasonable and usual business hours of 8:00 a.m. to 6:00 p.m., exclusive of Saturdays, Sundays, and state and national holidays (“Building Standard Hours”), or such shorter period specified or prescribed by any applicable policies or regulations adopted by any utility or government agency. If Tenant desires Building Standard HVAC before or after Building Standard Hours, Tenant shall request such service in advance, and Landlord shall provide such service, at the then current hourly rate charged to other tenants in the Building. Tenant shall pay such charges as Additional Rent within ten (10) days of receipt of invoice. Landlord’s current charges as of the Lease Date for Building Standard HVAC after Building Standard Hours are as follows: Fan only - $55.00 per hour; HVAC - $150.00 per hour plus applicable charges for Building engineers. Such charges are subject to change from time to time.
and may include minimum required hours for Building engineers. If Tenant’s equipment or office machines require additional air conditioning capacity above that provided by Landlord as Building standard or during other than Building Standard Hours, such additional air conditioning installation and operating costs shall be paid by Tenant. Tenant shall not, without Landlord’s prior written consent, use heat generating machines or equipment or lighting other than Building standard lights in the Premises which affect the temperature otherwise maintained by the Building air conditioning system. If such consent is given, Landlord shall have the right to install supplementary air conditioning units servicing the Premises, and the cost thereof, including the cost of installation and the cost of operation and maintenance thereof, shall be paid by Tenant to Landlord as Additional Rent.

(c) Public elevator service and a freight elevator serving the floors on which the Premises are situated, during hours designated by Landlord, provided, however, that there shall always be available at least one public elevator supplying access to the Premises twenty-four (24) hours each day, seven (7) days per week, subject to any Building security requirements, maintenance, the effects of emergencies, any interruption of utility services, and the effects of mechanical breakdowns or any damage to, or destruction of, the Building of Building systems.

(d) Janitorial service five (5) days per week, excluding holidays; provided, however that if Tenant improvements are not consistent in quality and/or quantity with Building standard improvements and therefore require special cleaning or janitorial services, Tenant shall pay any cleaning and janitorial costs attributable to such special services. Tenant shall comply with all Legal Requirements and Landlord’s then current sustainability practices relating to the handling, sorting, separation and/or recycling of all refuse, waste and rubbish.

(e) As of the Suite 400 Delivery Date, there is a Building lobby attendant present 24 hours per day, 7 days per week, 52 weeks per year, but Landlord does not covenant to maintain such attendant throughout the Term of this Lease.

Section 13.3 Conduit Use. If there is no Event of Default under this Lease Tenant may request the ability, at its sole cost, risk and expense, and, subject to availability, Landlord will not unreasonably withhold its consent to Tenant, to use a reasonable portion of Building shafts, risers and conduits to be designated by Landlord between the Premises and other parts of the Building. Tenant’s access to and use of such shafts, risers and conduits shall be subject to the terms and conditions hereinafter contained.

(a) Such shafts, risers and conduits shall be used solely to provide telecommunications services to the Premises in connection with the conduct of Tenant’s business in the Premises and for no other purpose.

(b) Such shafts, risers and/or conduits shall be used by Tenant in common with others on a non-exclusive basis and Tenant shall cooperate with and not interfere with the use of such shafts, risers and/or conduits by others. If Tenant or its employees, designees, contractors or other service providers shall damage, violate or interfere with any such shafts, risers and/or conduits or the use thereof by others or their equipment or cabling or other equipment contained therein, Tenant shall, upon demand, correct and /or cure the same at its expense.
(c) All of Tenant’s installations and Alterations proposed in connection with the use of such shafts, risers and/or conduits shall be subject to all applicable provisions of this Lease, including, without limitation, the requirement that Tenant obtain Landlord’s separate consent thereto and perform any related installations or Alterations at its sole cost and expense and otherwise in accordance with Article 15 hereof. Landlord may require Tenant to utilize Landlord’s riser management firm for installations or Alterations affecting such shafts, conduits and/or risers, provided the charges of such firm are reasonably competitive.

(d) For purposes of this Lease, all installations within any such shafts, risers and/or conduits shall constitute personal property of the Tenant. Landlord shall have no obligation to provide any services, maintenance, repairs or restoration to or for any of Tenant’s installations within or related to Tenant’s use of any such shafts, risers and/or conduits, and Tenant shall, at its sole risk, cost and expense, maintain and repair (including necessary replacements or restorations) all such installations in good and safe working order and condition and provide all insurance for the same.

(e) Prior to the expiration or termination of this Lease, Tenant shall, at its sole cost and expense, remove all installations and Alterations within or affecting any such shafts, risers and/or conduits, including without limitation, all cabling, runways, piping, sleds and dunnage and restore such shafts, risers and/or conduits to the condition prior to the installation of any of Tenant’s installations. Tenant’s removal and restoration obligation shall survive the termination and/or expiration of this Lease.

Section 13.4 Manufacturer’s Warranty. In the event any special equipment or appliance is installed by Landlord in the Premises, whether during initial build-out for Tenant, or at any time subsequent to the Commencement Date, such equipment or appliance shall be covered only by the manufacturer’s warranty. After the original warranty period on said equipment or appliance has expired, the servicing, maintenance, repair, or replacement of said equipment or appliance shall be the sole responsibility and expense of Tenant throughout the remainder of the Term and any extensions thereof.

Section 13.5 Limitation on Liability. (a) Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the Rent herein reserved be abated by reason of (i) the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing services; (ii) failure to furnish or delay in furnishing any such services when such failure or delay is caused by accident or any condition beyond the reasonable control of Landlord or by the making of necessary repairs or improvements to the Premises or to the Building; or (iii) the limitation, curtailment, rationing or restrictions on use of water, electricity, gas or any other form of energy serving the Premises or the Building. Landlord shall use reasonable efforts to remedy any interruption in the furnishing of such services.

(b) Notwithstanding the foregoing, if (for reasons other than condemnation or casualty which are governed by the provisions of Articles 18 and 19, respectively) Landlord fails to provide any “Essential Service” (as hereinafter defined) which Landlord is obligated to perform or provide under this Lease and, as a result thereof, Tenant shall be not able to use and shall have
discontinued its occupancy of all or any portion of the Premises for a period of five (5) consecutive business days or more after Notice thereof to Landlord specifying such failure and stating that Tenant intends to exercise its rights under this Section 13.5(b), then Tenant shall be entitled to an abatement of Monthly Rent allocable to such portion of the Premises which is not usable and is unoccupied for each day from and after said five (5) consecutive business day period until the earlier to occur of such Essential Service being restored by Landlord or such portion of the Premises is again occupied by Tenant. As used herein, “Essential Service” means any of the following: heating or air-conditioning (as required in this Article 13), office electricity to be provided by Landlord as and to the extent provided under this Article 13 and elevator service. The abatement provided for in this subsection shall not apply to any discontinuance of an Essential Service caused by casualty, condemnation or force majeure. The foregoing notwithstanding, Tenant shall not be entitled to an abatement of such Monthly Rent so long as or in the event that such failure results from: (i) any installation, alteration or improvement performed or condition created on behalf of Tenant or its agents, employees, contractors, subtenants or invitees; (ii) Tenant shall be in default or fail to perform its obligations under this Lease after the expiration of applicable notice and cure periods; (iii) the negligence or tortuous conduct of Tenant, its agents, employees, contractors, subtenants or invitees; or (iv) Unavoidable Delays.

ARTICLE 14
TENANT’S CARE OF THE PREMISES

Tenant will maintain the Premises in the same condition existing at the time they were delivered to Tenant, reasonable wear and tear, casualty and condemnation excluded. Tenant shall also be responsible for the maintenance of Tenant’s equipment, personal property, and trade fixtures located in the Premises and any special equipment, such as supplemental air conditioning units, installed at Tenant’s request. Tenant will immediately advise Landlord of any damage to the Premises or the Project. All damage or injury to the Premises or the Project that is caused by Tenant, its agents, employees, or invitees may be repaired, restored, or replaced by Landlord, at the expense of Tenant. The cost of any such repairs plus fifteen (15%) percent of such expense for Landlord’s overhead shall be Additional Rent and will be paid by Tenant within ten (10) days after delivery of a statement for such expense. Landlord has no obligation and has made no promise to alter, remodel, improve, repair, decorate or paint the Premises or any part thereof, except as may be specified in Article 4. No representations respecting the condition of the Premises or the Project have been made by or on behalf of Landlord to Tenant, except as specifically set forth in this Lease.

ARTICLE 15
ALTERATIONS

Section 15.1 General.

(a) Tenant will not make or allow to be made any alterations, additions, or improvements to or of the Premises, or attach any fixtures or equipment to the Premises (an
“Alteration”), without first obtaining Landlord’s written consent. Alterations of a purely cosmetic nature, such as painting or wallpapering, and which do not require a building permit or other governmental authorizations shall not require Landlord’s approval, but shall be subject to Tenant complying with all other applicable provisions of this Lease and this Article 15 (other than the requirements of sub-sections (i) and (iv) below), including without limitation the requirement that Tenant give prior Notice of such changes to Landlord in order that Landlord can confirm that such changes are truly cosmetic in nature. Landlord further agrees that it will not require payment of the construction management fee referred to in sub-paragraph (b) below for cosmetic alterations being performed at any one time (or contemporaneously) costing $50,000 or less in the aggregate. Prior to commencing any Alterations, Tenant shall furnish to Landlord:

(i) Copies of all governmental permits and authorizations which may be required in connection with such Alteration;

(ii) A certificate evidencing that Tenant or its contractors have procured general liability and worker’s compensation insurance including without limitation contractors’ protective, blanket contractual and completed operations coverages, with limits satisfactory to the Landlord;

(iii) Such additional bodily injury and property damage insurance (over and above the insurance required to be carried by Tenant pursuant to the provisions of Article 8) as Landlord may reasonably require because of the nature of the work to be done by Tenant; and

(iv) Plans and specifications for such Alterations.

(b) If Landlord reasonably determines that the services of architects or engineers or other professionals are reasonably required in order to review Tenant’s plans for any Alterations, the fees charged by such professionals shall similarly be paid by Tenant. In addition, Tenant shall pay to Landlord or its managing agent a construction management fee of three percent (3%) of the cost of any Alterations for coordinating access to the Building and Building services in connection with such Alterations. All such fees and charges shall be deemed Additional Rent and shall be paid within ten (10) days of Tenant’s receipt of an invoice for such services. Neither Landlord’s or its managing agent’s review of any plans or specifications, providing any such coordination services or consent to any Alterations shall create any responsibility or liability on the part of Landlord or its managing agent for the completeness, design sufficiency, or compliance with Legal Requirements or create any guaranty or warranty with respect to such Alterations. All such Alterations:

(i) will be performed by contractors reasonably approved by Landlord and subject to conditions specified by Landlord (which may include requiring the posting of a mechanic’s or insurance construction lien bond);

(ii) shall, when completed, be of such a character as not to lessen the value of the Premises;

(iii) shall conform to applicable Building codes and shall be approved by any and all governmental, quasi-governmental or utility authority having jurisdiction;
(iv) shall be performed promptly in accordance with the plans and specifications, in a good workmanlike manner and in full compliance with all applicable permits, authorizations, building and zoning laws and the Building Rules in effect at such time; and

(v) shall be located entirely within the Premises and performed in such a manner so as not to interfere with any other tenant in the Project or impose any additional expense upon Landlord in the maintenance or operation of the Project unless Tenant agrees, in writing, on terms and conditions satisfactory to Landlord to be solely responsible for all such additional expense.

(c) Subject to Tenant’s rights and obligations in Section 17.1, all Alterations made in or upon the Premises either by Tenant or Landlord, will immediately become Landlord’s property and at the end of the Term will remain on the Premises without compensation to Tenant, provided, however (i) Landlord at its option may require Tenant to remove any or all Alterations upon expiration or earlier termination of the Lease and (ii) Landlord shall not require the removal of Tenant’s Initial Alterations to the Premises, except for such improvements as are in Landlord’s opinion not standard office installations, such as private bathrooms, exercise facilities, internal staircases and the hardware lab referred to in Section 3.1 hereof. Landlord shall indicate in its approval of the plans for any Alterations, including Tenant’s Initial Alterations, which Alterations or improvements are to be removed pursuant to this Section.

(d) Landlord shall not be liable for any failure of any Building facilities or services caused by any Alterations. Tenant shall pay the cost of correcting any such faulty installation as Additional Rent unless caused by improper or defective work performed by Landlord or its contractor.

(e) In the event Tenant installs any equipment which generates noise or vibration exceeding levels typically generated by standard office equipment, as reasonably determined by Landlord, whether or not previously approved by Landlord, Landlord reserves the right to require Tenant to (i) provide and maintain, at Tenant’s sole cost and expense, noise/vibration suppressing equipment for all such equipment; and (ii) remove any and all equipment that creates noise and/or vibrations that disturb other tenants of the Building.

Section 15.2 Free-Standing Partitions. Tenant will have the right to install or relocate free-standing work station partitions, without Landlord’s prior written consent, so long as no building or other governmental permit is required for their installation or relocation. However, if a permit is required, Tenant shall not install or relocate such partitions without Landlord’s prior written consent, which shall not be unreasonably withheld. The free-standing work station partitions which are paid for by Tenant will be part of Tenant’s trade fixtures for all purposes under this Lease. All other partitions installed in the Premises are and will be Landlord’s property for all purposes under this Lease.
ARTICLE 16
CONSTRUCTION LIENS

Tenant will pay or cause to be paid all costs and charges for all work done by Tenant or caused to be done by Tenant, in or to the Premises, and for all materials furnished for, or in connection with, such work. Tenant will indemnify Landlord against and hold Landlord harmless of and from all construction liens and claims of liens, and all other liabilities on account of such work by or on behalf of Tenant, other than work performed by Landlord. If any such lien, at any time, is filed against any part of the Project, Tenant will cause such lien to be discharged of record within ten (10) days. If Tenant fails to pay any charge for which a construction lien has been filed, or has not complied with such statutory procedures as may be available to release the lien, Landlord may, at its option, pay such charge and related costs and interest without inquiring into the validity thereof. The amount so paid, together with reasonable attorneys’ fees incurred, will be immediately due from Tenant to Landlord as Additional Rent. Nothing contained in this Lease will be deemed the consent or agreement of Landlord to subject Landlord’s interest in the Project to liability under any construction or other lien law. If Tenant receives Notice that a lien has been or is about to be filed against the Premises or the Project, or that any action affecting title to the Project has been commenced on account of work done by, or for, or materials furnished to, or for, Tenant, it will immediately give Landlord Notice of such lien notice. At least fifteen (15) days prior to the commencement of any work in or to the Premises, Tenant will give Landlord Notice of the proposed work and the names and addresses of the persons supplying labor and materials for the proposed work. Landlord will have the right to post notices of non-responsibility or similar notices on the Premises in order to protect the Premises against any such liens.

ARTICLE 17
END OF TERM

Section 17.1 Surrender of Premises. Upon the expiration of the Term or earlier termination of this Lease, Tenant will deliver all keys to Landlord and promptly quit and surrender the Premises broom clean, in good order and repair, ordinary wear and tear excepted, and further excepting damage by casualty or condemnation except damage by casualty shall be excepted only to the extent of Landlord’s obligation to repair or restore damage by casualty under this Lease. Tenant, at its sole expense, shall remove such Alterations as Landlord has requested in accordance with Article 15, and all of its computer, data, telephone and security equipment including all computer, data, telephone and security wiring and cables in the plenum and the walls. Tenant will fully repair any damage occasioned by the removal of any trade fixtures, equipment, furniture or Alterations. All trade fixtures, equipment, furniture, effects and Alterations remaining on the Premises after the expiration or termination of this Lease will be deemed conclusively to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord in a commercially reasonable manner without Notice to Tenant or any other person and without obligation to account for them. Notwithstanding the foregoing provisions of this Article if Tenant has failed to surrender the Premises in the condition required hereunder, Landlord at its option may perform all or a portion of removals and repairs required of Tenant hereunder, for Tenant’s account, and Tenant will reimburse Landlord for the costs of doing so (including fifteen (15%) percent for Landlord’s overhead and profit) within ten (10) days after receipt of a statement of such cost.
Section 17.2 Holding Over.

(a) If Tenant fails to vacate the Premises after the expiration of the Term, such holding over shall be construed as a tenancy from month-to-month, subject to all the conditions, provisions and obligations of this Lease as existed during the last month of the Term hereof, so far as applicable to a month-to-month tenancy except that the Rent shall be the greater of an amount equal to one hundred fifty (150%) percent of the greater of (i) the Rent in effect immediately prior to the expiration (or sooner termination) of the Lease; or (ii) the current market rent. The foregoing notwithstanding, the parties agree that the Rent for the first thirty (30) day period that Tenant holds over in occupancy after the expiration (or sooner termination) of the Term shall be in an amount equal to one hundred twenty-five percent (125%) of the Rent in effect immediately prior to the expiration (or sooner termination) of the Lease. None of the foregoing payments shall serve to extend or renew the Term.

(b) Failure of Tenant to remove any Alterations or any substantial amount of furniture, furnishings, or trade fixtures which Tenant is required to remove under this Lease shall constitute a failure to vacate.

(c) Notwithstanding the foregoing, Landlord may evict Tenant from the Premises and recover damages including consequential damages caused by wrongful holdover.

Section 17.3 Survivorship. The provisions of this Article shall survive the expiration or sooner termination of this Lease.

ARTICLE 18
EMINENT DOMAIN

If all or any part of the Premises shall be taken or conveyed as a result of the exercise of the power of eminent domain or under threat of the exercise of such power, this Lease shall terminate as to the part so taken as of the date of taking. In the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Premises by Notice to the other within thirty (30) days after such date; provided, however, that a condition to the exercise by Tenant of such right to terminate shall be that the portion of the Premises taken or conveyed shall be of such extent and nature as substantially to impede or impair Tenant’s use of the balance of the Premises. In the event of any taking, Landlord shall be entitled to any and all compensation, damages, income, rent awards or any interest therein whatsoever which may be paid or made in connection therewith. Tenant shall have no claim against Landlord for the value of any unexpired Term or any other value whatsoever; provided however, Tenant shall be entitled to any and all compensation, damages, income, rent or awards paid for, or on account of, Tenant’s moving expenses, trade fixtures and equipment; provided same does not reduce Landlord’s award. In the event of a taking of the Premises which does not result in a termination of this Lease, Rent will be abated in the proportion of the rentable area of the Premises so taken to the rentable area of the Premises immediately before such taking, and Tenant’s Share will be
appropriately recalculated. Tenant agrees that its rights to terminate this Lease due a partial taking are governed by this Article 18. Tenant waives all rights it may have under California Code of Civil Procedure §1265.130, or otherwise, to terminate this Lease based on a partial taking.

ARTICLE 19
DAMAGE AND DESTRUCTION

Section 19.1 Repair. If the Premises or the Building are damaged by fire or other casualty, Landlord shall forthwith repair the same subject to Unavoidable Delays and adjustment of insurance claims, subject to the provisions of this Article, provided such repairs can, in Landlord’s opinion, be made within one hundred eighty (180) days, and this Lease shall remain in full force and effect.

Section 19.2 Option to Repair or Terminate. If such repairs cannot, in Landlord’s reasonable opinion, be made within one hundred eighty (180) days, Landlord, at its option, shall, by Notice to Tenant within thirty (30) days after the date of such fire or other casualty, either (a) elect to repair or restore such damage subject to Unavoidable Delays and adjustment of insurance claim, with this Lease continuing in full force and effect; or (b) terminate this Lease as of a date specified in the Notice. Should a “Major End of Lease Casualty” occur then Tenant shall have an option to terminate this Lease by Notice to Landlord given within thirty (30) days after the date of such Major End of Lease Casualty. As used herein, a “Major End of Lease Casualty” shall mean a fire or other casualty which damages the Premises in the last twelve (12) months of the Term of this Lease where (a) Tenant has not exercised any option (should it have any) to extend or renew the Term of this Lease, and (b) the repairs cannot be made, in Landlord’s reasonable opinion, within the lesser of (i) one hundred eighty (180) days or (ii) the remainder of the Term of the Lease.

Section 19.3 Rent Abatement. If such fire or other casualty shall have damaged the Premises or common areas necessary to Tenant’s occupancy and if such damage is not the result of the willful misconduct of Tenant or Tenant’s employees or invitees, then during the period the Premises are rendered unusable by such damage, Tenant shall be entitled to a reduction in Rent in the proportion that the rentable area of the Premises rendered unusable by such damage bears to the total rentable area of the Premises.

Section 19.4 The provisions of this Lease, including those in this Article 19, constitute an express agreement between Landlord and Tenant that applies in the event of any casualty to the Premises. Tenant, therefore, fully waives the provisions of any statute or regulation, including California Civil Code §19322(2) and §1933(4), or any successor statute, relating to any rights or obligations concerning a casualty.

Section 19.5 In the event of any fire or other casualty affecting all or any part of the Premises, Landlord shall send Tenant a Notice containing Landlord’s reasonably estimated length of time needed to substantially complete the restoration thereof, and if such estimate shall exceed nine (9) months, then Tenant, as its sole remedy, shall have the right, exercisable by Notice to Landlord given on or before the thirtieth (30th) day after Tenant’s receipt of such Notice to terminate this Lease effective on a date specified in Tenant’s Notice but in no event less than thirty (30) days after the date of such Tenant’s Notice.
ARTICLE 20
SUBORDINATION

Section 20.1 General. This Lease and all of Tenant’s rights hereunder shall be subject and subordinate to any mortgage, deed of trust or other security instrument now or hereafter affecting all or any portion of the Project (including, without limitation, the Deed of Trust dated as of July 31, 2007, between Landlord, as grantor, Fidelity National Title Insurance Company, as trustee, and Metropolitan Life Insurance Company, as beneficiary (herein referred to as the “Deed of Trust”)) and to all renewals, modifications, consolidations, replacements and extensions thereof (herein referred to as “Security Documents”), to any and all advances secured by any Security Document (including, without limitation, any additional advances made in connection with the Deed of Trust) and to all of the rights of the holders of any Security Documents. The foregoing subordination shall be self-operative and no further instrument of subordination need be obtained by any holder of a Security Document, provided, however, that upon such holder’s request, Tenant shall promptly execute and deliver an instrument reasonably acceptable to Tenant prepared by such holder evidencing and confirming such subordination. Notwithstanding the foregoing, if the holder of a Security Document shall elect to have this Lease be superior to the lien of such Security Document, this Lease shall be deemed to be superior to such Security Document upon the giving of Notice to such effect by such holder to Tenant, irrespective of the relative dates of execution of this Lease and such Security Document or the recordation of either.

Section 20.2 Attornment. In the event the holder of any Security Document (or any other person or entity) shall come into possession of or acquire title to the Project as a result of the enforcement or foreclosure (judicial or nonjudicial) of such Security Document, or by means of the delivery to such holder (or to such other person or entity) of a deed-in-lieu of foreclosure or as a result of any other means, or in the event that Landlord’s estate in such real property is conveyed or passes to a person or entity by operation of law or any other means (such holder, and any other such person or entity, so coming into possession of or acquiring title to such real property being sometimes collectively referred to herein in such capacity as a “Successor Owner”), then in any of said events Tenant shall, at the election and upon the request of such Successor Owner, attorn to such Successor Owner as its landlord under this Lease. The foregoing attornment requirement shall be self-operative upon any such request of a Successor Owner without the execution of any further instruments on the part of any of the parties hereto immediately upon the Successor Owner coming into possession of, or acquiring title to, the Project. Tenant agrees, however, upon demand of such Successor Owner, to execute an instrument reasonably acceptable to Tenant in confirmation of the foregoing provisions prepared by such Successor Owner. Upon such attornment, Tenant shall be bound to the Successor Owner under all of the terms, covenants and conditions of the Lease for the balance of the Term and any extensions or renewals thereof (if any) which may be effected in accordance with any option set forth in this Lease, with the same force and effect as if the Successor Owner were the Landlord under this Lease, except that in such case neither the holder of the related Security Document nor the Successor Owner shall: (i) be liable for any act, omission or default of any
prior landlord under this Lease (including, without limitation, Landlord); or (ii) be subject to any offsets or defenses which Tenant might have against any prior landlord under this Lease (including, without limitation, Landlord) except to the extent such act, omission or default is of a continuing nature and continues after the period the Successor Owner has succeeded to the interest of the Landlord under this Lease, and is capable of being cured, and such Successor Owner has been provided with written notice of the same; or (iii) be bound by any rent or additional rent which Tenant might have paid for more than the then current month to any prior landlord under this Lease (including, without limitation, Landlord) or by any security deposit, cleaning deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord under this Lease (including, without limitation, Landlord) (except to the extent the holder of such Security Document or other Successor Owner shall have actually received any such amounts); or (iv) be bound by any amendment or modification of this Lease made without the consent of the holder of such Security Document or other such Successor Owner (unless such consent was not required under such Security Document); or (v) be bound by any agreement of any landlord under this Lease (including, without limitation, Landlord) with respect to the completion of any improvements in the Premises or the real property encumbered by the Security Document or for the payment or reimbursement to Tenant of any contribution to the cost of the completion of any such improvements.

Section 20.3 Notice to Lender. Tenant shall send a copy of any notice given Landlord under this Lease which alleges that Landlord is in default of its obligations under this Lease or in which Tenant claims a right to terminate this Lease to the holder of each Security Document at the same time and in the same manner such notice is sent to Landlord. Notice with regard to the Deed of Trust shall be sent as follows:

Metropolitan Life Insurance Company  
10 Park Avenue  
Morristown New Jersey 07962  
Attention: Senior Vice president, Real Estate Investments  
with a copy to:

Metropolitan Life Insurance Company  
425 Market Street, Suite 1050  
San Francisco, California 04105  
Attention: Director  
with a copy to:

Metropolitan Life Insurance Company  
425 Market Street, Suite 1050  
San Francisco, California 04105  
Attention: Associate General Counsel

Section 20.4 Subordination and Non-Disturbance. Following execution and delivery of this Lease, Landlord shall request and use commercially reasonable efforts to obtain from its
existing mortgagee, a subordination, non-disturbance and attornment agreement on such mortgagee’s current customary form (herein, an “SNDA”) within thirty (30) days of the Lease Date. Landlord shall not be obligated to expend any monies or agree to any modifications of such mortgage in order to obtain the SNDA. Tenant shall bear and pay when due any costs incurred or imposed in connection with obtaining the SNDA. Failure to obtain such SNDA shall not impose any liability upon Landlord or in any way affect the validity of this Lease or the parties’ respective obligations hereunder.

ARTICLE 21
ENTRY BY LANDLORD

Section 21.1 Entry. Upon reasonable advance notice to Tenant (except in the event of emergency) (which notice need not be in writing and may be given by telephone, email or in person to Tenant’s designated employee at the Premises), Landlord, its agents, employees, and contractors may enter the Premises at any time and at reasonable hours to:

(a) Inspect the Premises;

(b) Exhibit the Premises to prospective purchasers, lenders or tenants (provided Landlord shall only have the right to show the Premises to prospective tenants during the last twenty-four (24) months of the Term);

(c) Determine whether Tenant is complying with its Lease obligations, if Landlord has a good faith belief that Tenant is not complying with its Lease obligations;

(d) Supply cleaning service and any other service to be provided by Landlord to Tenant according to this Lease;

(e) Post notices of non-responsibility or similar notices; or

(f) Make repairs required of Landlord under the terms of this Lease or make repairs to any adjoining space or utility services or make repairs, alterations, or improvements to any other portion of the Building; however, all such work will be done as promptly as reasonably possible and so as to cause as little interference to Tenant as reasonably possible.

Tenant shall have the right to have a Tenant representative present during any such Landlord entry, provided Tenant agrees to make such a representative available should it desire to do so.

Section 21.2 Waiver. Except to the extent of any personal injury or property damage arising from Landlord or Landlord’s employees’, agents, contractors’ or invitees’ negligence or willful misconduct, Tenant hereby waives any claim against Landlord, its agents, employees, or contractors 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 any entry in accordance with this Article. Landlord will at all times be provided with 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 in advance). Landlord will have the right to use any and all means Landlord may deem proper to open doors in and to the Premises in an emergency in order to obtain entry to the Premises, provided that Landlord will promptly repair any damages caused by any forced entry. Any entry to the Premises by Landlord in accordance with this Article will not 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 of the Premises, nor will any such entry entitle Tenant to damages or an abatement of Rent or other charges Tenant is required to pay pursuant to this Lease.

ARTICLE 22
INDEMNIFICATION, WAIVER, AND RELEASE

Section 22.1 Indemnification and Waiver. Except to the extent arising from Landlord or Landlord’s employees’, agents, contractors’ or invitees’ negligence or willful misconduct, Tenant shall indemnify and hold Landlord and Landlord’s members, officers, directors, agents, employees and contractors (“Landlord Parties”) harmless against and from any and all loss, cost and expense arising from Tenant’s use of the Premises, and from any breach or default in the performance of any obligation on Tenant’s part to be performed under the terms of this Lease, or arising from any negligence or willful misconduct of the Tenant, or any of its agents, employees or contractors. In case any action or proceeding is brought against any Landlord Party by reason of such claim, Tenant, upon Notice from Landlord, shall defend same, at Tenant’s expense, by counsel reasonably satisfactory to Landlord. Except to the extent arising from Landlord or Landlord’s employees’, agents, contractors’ or invitees’ negligence or willful misconduct, Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to Tenant’s property or injury to Tenant’s employees, agents, visitors, invitees, and licensees in or upon the Premises and Tenant hereby waives all claims in respect thereof, from any cause whatsoever. Except to the extent arising from the negligence or willful misconduct of Tenant or its agents, employees or contractors and subject to the provisions of Section 8.5 hereof, Landlord shall indemnify and hold Tenant and Tenant’s members, officers, directors, agents, employees and contractors (the “Tenant Parties”) harmless against and from any and all loss, cost and expense arising from any claim for personal injury or property damage resulting from the negligence or willful misconduct of Landlord or any of its agents, employees or contractors. In case any action or proceeding is brought against any Tenant Party by reason of such claim, Landlord, upon Notice from Tenant, shall defend same, at Landlord’s expense, by counsel reasonably satisfactory to Tenant.

Section 22.2 Release. Landlord shall not be liable to Tenant for any entry of third parties into the Project, or for any damage to person or property, or loss of property in and about the Project by or from any unauthorized or criminal acts of third parties (i.e., parties other than Landlord, its employees, agents or contractors), regardless of any breakdown, malfunction, or insufficiency of any security measures, practices, or equipment provided by Landlord. Tenant shall immediately notify Landlord in writing of any breakdown or malfunction of any security measures, practices or equipment provided by Landlord as to which Tenant has knowledge.

Section 22.3 Limitations of Actions. In any situation in which Tenant disputes Landlord’s reasonableness in exercising its judgment or withholding or delaying its consent or
approval, the sole remedies available to Tenant shall be those of an equitable nature, such as an action for an injunction or specific performance. Tenant specifically waives the rights to money damages or other remedies (including the right to claim money damages by way of setoff, counterclaim or defense). Failure by Tenant to seek relief within ninety (90) days of the date of Landlord’s decision or alleged failure to render a decision shall be deemed a waiver of any right to dispute such action.

Section 22.4 Survival. The provisions of this Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 23
SECURITY DEPOSIT AND FIRST MONTH’S RENT

Section 23.1 Security Deposit. (a) Tenant will deposit with Landlord, upon Tenant’s execution of this Lease, the sum set forth in Section 1.1 as the Security Deposit. The Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all of the provisions of this Lease to be performed or observed by Tenant. In the event Tenant fails to perform or observe any of the provisions of this Lease (after the expiration of any applicable grace or cure periods), then Landlord, at its option, may (but shall not be obligated to do so) apply the Security Deposit, or portion thereof as may be necessary, to remedy such default, to repair damages to the Premises caused by Tenant or to the payment of any other expense which Landlord may incur as a result of Tenant’s default. In the event Landlord so applies any portion of the Security Deposit, Tenant shall pay to Landlord, within thirty (30) days after written demand for such payment by Landlord, all moneys necessary to restore the Security Deposit to the original amount. Provided Tenant is not in default, any portions of the Security Deposit remaining upon expiration or earlier termination of this Lease shall be returned to Tenant within thirty (30) days after the expiration or earlier termination of this Lease. Tenant shall not be entitled to any interest thereon.

Section 23.2 Letter of Credit. (i) Tenant shall have the right to deposit said Security Deposit in the form of a renewable, irrevocable, unconditional and transferable Letter of Credit from an Issuing Bank in substantially the form attached hereto as Exhibit E. Tenant shall continuously renew such Letter of Credit at least sixty (60) days prior to each expiration date thereof and failure to do so shall constitute a default under this Lease and Landlord shall thereupon immediately be entitled to draw upon said Letter of Credit without Notice to Tenant.

(ii) In the event that at any time during the Term, Landlord, in Landlord’s reasonable opinion, believes (i) that any rating of the Issuing Bank shall be less than the rating specified for an Issuing Bank in this Lease; or (ii) that circumstances have occurred indicating that the Issuing Bank may be incapable of, unable to, or prohibited from honoring the then existing Letter of Credit (hereinafter referred to as the “Existing L/C”) in accordance with the terms thereof, then, upon the happening of either of the foregoing, Landlord may send Notice to Tenant to replace the Existing L/C within ten (10) business days of the receipt of Landlord’s Notice with a new letter of credit (hereinafter referred to as the “Replacement L/C”) from an Issuing Bank meeting the qualifications for an Issuing Bank in this Lease. Upon receipt of a Replacement L/C meeting said qualifications, Landlord shall forthwith return the Existing L/C to
Tenant. In the event that a Replacement L/C meeting said qualifications is not received by Landlord within the time specified or if Landlord reasonably believes an emergency exists, then in either event, the Existing L/C may be presented for payment by Landlord and the proceeds thereof shall be held by Landlord as a cash Security Deposit in accordance with Section 23.1 subject, however, to Tenant’s right, at any time thereafter prior to a Tenant’s default hereunder, to replace such proceeds with a new Letter of Credit meeting the requirements of this Section 23.2.

Section 23.3 In the event of a sale of Landlord’s interest in the Land, Building and/or Project, Landlord shall have the right, upon Notice to Tenant (which may be given simultaneously with the transfer), to transfer the Security Deposit (or Letter of Credit) deposited hereunder to the vendee or lessee, and Landlord shall thereupon be released by Tenant from all liability for the return of such Security Deposit (or Letter of Credit). In such event, Tenant agrees to look solely to the new Landlord for the return of said Security Deposit (or Letter of Credit). It is agreed that the provisions hereof shall apply to every transfer or assignment made of said Security Deposit (or Letter of Credit) to a new Landlord.

Section 23.4 Tenant covenants that it will not assign or encumber, or attempt to assign or encumber, the Security Deposit (or Letter of Credit) deposited hereunder as security or the proceeds thereof, and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment, or attempted encumbrance.

Section 23.5 Security Reduction. Provided there is no Event of Default under this Lease as of the applicable security reduction date or at the time of Tenant’s request, and Tenant has delivered to Landlord evidence reasonably satisfactory to Landlord that Tenant has completed a successful equity raise of not less than $25,000,000, then Landlord, upon Tenant’s request, agrees the Security Deposit under the Lease shall be reduced by $500,000 on the first (1st) day of the twenty-second (22nd) month after the Suite 550 Rent Commencement Date and by $600,000 on the first (1st) day of the thirty-fourth (34th) month after the Suite 550 Rent Commencement Date. If such Security Deposit is then in the form of a Letter of Credit, Landlord agrees to then consent to a corresponding reduction in the amount of such Letter of Credit.

Section 23.6 First Month’s Rent. Tenant will deposit with Landlord, upon Tenant’s execution of this Lease, the sum set forth in Section 1.1 as the First Month’s Rent, which sum shall be applied to the first installment of Monthly Rent. In the event Tenant defaults under the terms of this Lease prior to the application of the First Month’s Rent, such sums shall be held as a Security Deposit to be disposed of in accordance with Section 23.1.

Section 23.7 Tenant waives the provisions of California Civil Code §1950.7, and all other provisions of law now in force, or that become in force after the Lease Date, that provide that Landlord may claim from the Security Deposit only those sums reasonably necessary to remedy defaults in the payment of accrued Rent, to repair damage caused by Tenant, or to clean the Premises. Landlord and Tenant agree that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the act or omission of Tenant or Tenant’s officers, agents, employees, independent contractors, or invitees, including future rent payments.

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ARTICLE 24
QUIET ENJOYMENT

Landlord covenants and agrees with Tenant that so long as Tenant pays the Rent and observes and performs all the terms, covenants and conditions of this Lease on Tenant’s part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises and Tenant’s possession will not be disturbed by anyone claiming by, through, or under Landlord, subject, nevertheless, to the terms and conditions of this Lease.

ARTICLE 25
EFFECT OF SALE

A sale or conveyance of the Project and/or assignment by Landlord of this Lease shall operate to transfer all of Landlord’s obligations under the Lease from and after the effective date of such sale, conveyance, or assignment to Landlord’s successor in interest and provided such successor assumes Landlord’s obligations thereafter accruing under this Lease in writing, such sale or conveyance shall release Landlord from liability for all of the covenants, terms, and conditions of this Lease, express or implied. After the effective date of such sale, conveyance, or assignment, Tenant will look solely to Landlord’s successor in interest in and to this Lease. This Lease will not be affected by any such sale, conveyance, or assignment, and Tenant will attorn to Landlord’s successor in interest to this Lease.

ARTICLE 26
DEFAULT

Section 26.1 Events of Default. The occurrence of any one or more of the following events (“Events of Default”) shall constitute a breach of this Lease by Tenant:

(a) if Tenant shall fail to pay Monthly Rent and/or Additional Rent for Operating Expenses or Taxes and such failure shall continue for more than five (5) days after receipt of Notice of nonpayment; or

(b) if Tenant shall fail to pay any other sum when and as the same becomes due and payable and such failure shall continue for more than five (5) days after receipt of Notice of nonpayment; or

(c) if Tenant shall fail to comply with the restrictions and provisions of Article 10; or

(d) if Tenant shall fail to perform or observe any other term hereof to be performed or observed by Tenant, and such failure shall continue for more than thirty (30) days after Notice thereof from Landlord (except that, if such default cannot with all due diligence be cured within such thirty (30) day period, such thirty (30) day period shall be extended for a period of time necessary for Tenant to cure such default, provided that Tenant commences to cure such default promptly, and in any event within such thirty (30) day period, and thereafter proceeds to cure such default with due diligence, but in no event shall such cure period be extended beyond ninety (90) days from the date of the original Notice of default); or
(e) If Tenant shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent, or shall file a petition seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file any answer admitting or shall fail timely to contest the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or any material part of its properties; or

(f) If any proceeding against Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, and such proceeding shall not have been dismissed within sixty (60) days after it commenced, or if, within sixty (60) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver or liquidator of Tenant or of any material part of its properties, such appointment shall not have been vacated; or

(g) Vacation or abandonment of the Premises for a continuous period in excess of five (5) business days, provided such vacation of the Premises shall not be deemed a default if Tenant continues to carry the insurance required under this Lease with respect to the Premises and pay the Rent reserved under this Lease.

Section 26.2 Landlord's Remedies. If an Event of Default shall occur under this Lease, then Landlord may exercise any one or more of the remedies set forth in this Section, or any other right or remedy available under applicable law or contained in this Lease:

(a) Terminate this Lease by giving Tenant written Notice thereof, in which event Tenant shall immediately surrender the Premises to Landlord. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

   (i) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

   (ii) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss Tenant proves reasonably could have been avoided; plus

   (iii) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves reasonably could be avoided; plus

   (iv) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant’s failure to perform its obligations under this Lease or which in the ordinary course would be likely to result therefrom; plus
At Landlord’s election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

As used in subparagraphs (i) and (ii) above, the “worth at the time of award” is computed by allowing interest at the Default Rate. As used in subparagraph (iii) above, the “worth at the time of award” is 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%). Tenant hereby waives for Tenant and for all those claiming under Tenant 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.

(b) Terminate Tenant’s right to possess the Premises without terminating this Lease by giving written Notice thereof to Tenant, in which event Tenant shall pay to Landlord: (1) all Rent and other amounts accrued hereunder to the date of termination of possession and (2) all Rent and other net sums required hereunder to be paid by Tenant during the remainder of the Term, diminished by any net sums thereafter received by Landlord through reletting the Premises during such period, after deducting all costs incurred by Landlord in reletting the Premises. Any sums due under the foregoing Section 26.2(b)(2) shall be calculated and due monthly. If Landlord elects to proceed under this Section 26.2(b), Landlord may remove all of Tenant’s property from the Premises and store the same in a public warehouse or elsewhere at the cost of, and for the account of, Tenant, without becoming liable for any loss or damage which may be occasioned thereby. If and to the extent required by applicable law, Landlord shall use commercially reasonable efforts to relet the Premises on such terms as Landlord in its sole discretion may determine (including a term different from the Term, rental concessions, and alterations to, and improvement of, the Premises); however, Landlord shall not be obligated to expend funds in connection with reletting the Premises, nor to relet the Premises before leasing other portions of the Building and Landlord shall not be obligated to accept any prospective tenant proposed by Tenant unless such proposed tenant meets all of Landlord’s leasing criteria. Landlord shall not be liable for, nor shall Tenant’s obligations hereunder be diminished because of, Landlord’s failure to relet the Premises or to collect rent due for such reletting. Tenant shall not be entitled to the excess of any consideration obtained by reletting over the Rent due hereunder. Reentry by Landlord in the Premises shall not affect Tenant’s obligations hereunder for the unexpired Term; rather, Landlord may, from time to time, bring an action against Tenant to collect amounts due by Tenant, without the necessity of Landlord’s waiting until the expiration of the Term. Unless Landlord delivers written Notice to Tenant expressly stating that it has elected to terminate this Lease, all actions taken by Landlord to dispossess or exclude Tenant from the Premises shall be deemed to be taken under this Section 26.2(b). If Landlord elects to proceed under this Section 26.2(b), it may at any time elect to terminate this Lease under Section 26.2(a).

(c) In addition to all other rights and remedies provided Landlord in this Lease and by Law, Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue the Lease in effect after Tenant’s breach and abandonment and recover Rents as they become due if Tenant has the right to sublet or assign the Lease, subject to reasonable limitations).
Section 26.3 If Landlord provides Tenant with any rent abatement in consideration of this Lease, Tenant acknowledges and agrees that Landlord provided such rent abatement to Tenant in reliance upon Tenant’s representation and warranty that Tenant shall faithfully and timely perform all terms and conditions of this Lease. Accordingly, if an Event of Default by Tenant shall occur, Landlord shall, in addition to all other damages due Landlord, recover such rent abatement from Tenant as Additional Rent.

Section 26.4 Continuation After Default. Even though Tenant has breached this Lease and abandoned the Premises, this Lease shall continue in effect as long as Landlord does not terminate this Lease by Notice of termination to Tenant, and Landlord shall have the right to enforce all of its rights and remedies under this Lease, including the right to recover the Rent as it becomes due under this Lease. Acts of maintenance or preservation, 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 this Lease.

Section 26.5 Other Relief. The remedies provided for in this Lease are in addition to any other remedies available to Landlord at law or in equity, by statute or otherwise.

Section 26.6 Landlord’s Right to Cure Defaults. All agreements and provisions to be performed by Tenant under any of the terms of this Lease shall be at its sole cost and expense and without any abatement of Rent. If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder and such failure shall continue for thirty (30) days after Notice thereof by Landlord, Landlord may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such other act on Tenant’s part to be made or performed as provided in this Lease. The thirty (30) day period referred to above shall not apply in the event of an emergency, Tenant’s failure to obtain insurance, Tenant’s failure to comply with any legal or insurance requirement requiring sooner action or the removal of any lien under Article 16 of this Lease. All sums paid by Landlord under this Section and all necessary incidental costs shall be deemed Additional Rent hereunder and shall be payable to Landlord on demand, together with interest thereon from the date of expenditure by Landlord to the date of repayment by Tenant at the greater of (a) eighteen (18%) percent per annum; or (b) the rate of interest equal to five (5%) percent per annum over the Prime Rate from time to time, but not in any event at a rate greater than the maximum rate permitted by law. In addition to any other rights or remedies of Landlord, Landlord shall have the same rights and remedies in the event of the nonpayment of such sums and interest as in the case of default by Tenant in the payment of Rent.

Section 26.7 Interest. Despite any other provision of this Lease, the total liability for interest payments shall not exceed the limits, if any, imposed by the usury laws of the State of California. Any interest paid in excess of those limits shall be refunded to Tenant by application of the amount of excess interest paid against any sums outstanding in any order that Landlord requires. If the amount of excess interest paid exceeds the sums outstanding, the portion exceeding those sums shall be refunded in cash to Tenant by Landlord. To ascertain whether any interest payable exceeds the limits imposed, any non-principal payment (including late charges) shall be considered to the extent permitted by law to be an expense or a fee, premium, or penalty rather than interest.

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ARTICLE 28
ARBITRATION

Section 28.1 General. The parties have not agreed to arbitrate all disputes arising pursuant to this Lease; however, Landlord or Tenant may at any time request final and binding arbitration of any matter in dispute where arbitration is expressly provided for in this Lease. Any party who fails to submit to binding arbitration following a lawful demand by the other party shall bear all costs and expenses, including reasonable attorneys’ fees, (including those incurred in any trial, bankruptcy proceeding, appeal or review) incurred by the other party in obtaining a stay of any pending judicial proceeding concerning a dispute which by the terms of this Lease has been properly submitted to mandatory arbitration, and or compelling arbitration of any dispute. The party requesting arbitration shall do so by giving Notice to that effect to the other party, specifying in said Notice the nature of the dispute. All such arbitration hearings shall be held in the City of San Francisco, California, and determined by a single arbitrator for matters up to $200,000.00 and by three arbitrators for any dispute in excess of such amount, in accordance (to the extent consistent with this Article) with the Commercial Arbitration Rules then pertaining to the American Arbitration Association (the “Rules”).

Section 28.2 Demand and Jurisdiction. A party demanding arbitration of a dispute shall give Notice to that effect to the other party and shall in such Notice appoint a disinterested arbitrator if a dispute is to be resolved by three (3) arbitrators. Within ten (10) business days after delivery of such Notice, the other party will also appoint a disinterested arbitrator by Notice to the original party. Within ten (10) business days after the latter appointment, the two arbitrators so appointed will appoint a third arbitrator (the “Neutral Arbitrator”). If only one arbitrator is to be used, then such arbitrator shall be selected as provided by the Rules. The Neutral Arbitrator shall conduct the arbitration. The qualification of the arbitrators shall be as follows: a real estate broker with at least ten (10) years experience in office leasing in San Francisco, a partner in a national accounting firm’s San Francisco office, or a lawyer specializing in real estate matters with at least ten (10) years experience in the San Francisco area. Selection of the Neutral Arbitrator will be subject to the following:

(a) if the second arbitrator is not appointed within said ten (10) business day period, the first arbitrator will select the Neutral Arbitrator; and

(b) if the two arbitrators appointed by the parties cannot agree, within ten (10) business days after the appointment of the second arbitrator, upon the appointment of the Neutral Arbitrator, they will give Notice to the parties of such failure to agree, and, if the parties fail to agree upon the selection of the Neutral Arbitrator within five (5) business days after the arbitrators appointed by the parties give such Notice, then either of the parties may apply to the then Chief Judge of the United States District Court having jurisdiction over the City and County of San Francisco for a court appointment of the Neutral Arbitrator.
Section 28.3 Procedure. The arbitrator(s) shall resolve all disputes in accordance with the substantive law of the State of California. The arbitrator(s) shall have no authority nor jurisdiction to award any damages or any other remedies beyond those which could have been awarded in a court of law if the parties had litigated the claims instead of arbitrating them nor to modify the provisions of this Agreement. The parties shall not assert any claim for punitive damages except to the extent such awards are specifically authorized by statute. The Federal Arbitration Act, Title 9 of the United States Code, is applicable to this Lease transaction and shall be controlling in any judicial proceedings and in the arbitration itself as to issues of arbitrability and procedure. No provision of, nor the exercise of any rights under this Article shall limit the right of the Landlord to evict the Tenant, exercise self help remedies or obtain provisional or ancillary remedies such as an injunction, receivership, attachment or garnishment. Any arbitration proceeding may proceed in the absence of any party who, after Notice, fails to be present at such arbitration and, in such event, an award may be made based solely upon the evidence submitted by the party that is present. Discovery will be in accordance with the Federal Rules of Civil Procedure. The arbitrators will render a decision and award in writing, within thirty (30) days after appointment, and will deliver counterpart copies of the decision and award to each of the parties. Unless otherwise agreed in writing by the parties or unless this Agreement has been terminated, during the pendency of the arbitration, the parties will continue to comply with all the terms and provisions of this Agreement which are not the subject of the arbitration proceeding. This agreement to arbitrate will be specifically enforceable by either party. The decision or award rendered by the arbitrator(s) shall be final, non-appealable, and binding upon the parties, and judgment may be entered upon it in accordance with applicable California law in a court of competent jurisdiction.

Section 28.4 Time Frame. The parties shall use their best efforts to complete any arbitration within sixty (60) days of initial notice of arbitration. The arbitrator(s) shall be empowered to impose sanctions for any party’s failure to do so. The provisions of this arbitration provision shall survive any termination, amendment, or expiration hereof or of the Lease. Each party agrees to keep all disputes and arbitration proceedings strictly confidential, except for the disclosure of information required in the ordinary course of business of the parties or as required by applicable law or regulation. Any time limitation (such as the statute of limitations or laches) which would bar litigation of a claim shall also bar arbitration of the claim. If any provision of this Article is declared invalid by any court, the remaining provisions shall not be affected thereby and shall remain fully enforceable. The parties understand that they have decided that upon demand of either of them, their disputes as described herein will be resolved by arbitration rather than in a court and once so decided cannot later be brought, filed or pursued in court.

Section 28.5 Other Rights. Nothing in this Article shall limit the right of either party to obtain from any court having jurisdiction equitable, provisional or ancillary remedies such as injunctive relief, attachment, garnishment, or the appointment of a receiver. Such rights may be exercised at any time, except to the extent such action is contrary to a final award of decision in any arbitration proceeding. The institution and maintenance of such action will not constitute a waiver of the right of either party to submit any dispute under this Agreement to arbitration, nor render inapplicable the compulsory arbitration provisions hereof.
Section 28.6 Fees. Each party will pay one-half the fees and the costs incurred by the Neutral Arbitrator, unless the Neutral Arbitrator exercises its discretion, or is required by this Article, to award fees, costs and expenses to the prevailing party.

ARTICLE 29
MISCELLANEOUS

Section 29.1 No Offer. This Lease is submitted to Tenant on the understanding that it will not be considered an offer and will not bind Landlord in any way until Tenant has duly executed and delivered triplicate originals to Landlord and Landlord has executed and delivered one of such originals to Tenant.

Section 29.2 No Recordation. Tenant’s recordation of this Lease or any memorandum or short form of it will be void and a default under this Lease.

Section 29.3 No Waiver. The failure of either party to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Lease or any of the rules and regulations shall not prevent a subsequent act which would have originally constituted a violation, from having all the force and effect of an original violation. No provision of this Lease shall be deemed to have been waived by either party, unless such waiver be in written agreement giving such waiver. The receipt by Landlord of Rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No payment by Tenant or receipt by Landlord of a lesser amount than the Monthly Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance of such Rent or pursue any other remedy in this Lease. No act by Landlord or its agent shall be deemed an acceptance of a surrender of the Premises or an agreement to accept such surrender unless in writing and signed by Landlord. No employee of Landlord or its agent shall have any power to accept the keys to the Premises and the delivery of the keys shall not operate as a termination of this Lease or surrender of the Premises. The parties acknowledge that the provisions of this Section are essential and material terms of this Lease.

Section 29.4 Estoppel Certificates. Landlord and Tenant agree that from time to time, upon not less than fifteen (15) days prior written request by the requesting party (each, a “Requesting Party”), that the other party shall promptly complete, execute and deliver to the Requesting Party, or any party or parties designated by the Requesting Party, an estoppel certificate in reasonable form certifying: (1) that this Lease is unmodified and in full force and effect (or if there have been modifications that the same are in full force and effect as modified and identifying the modifications); (2) the dates to which the Rent and other charges have been paid; (3) that the Premises have been unconditionally accepted by the Tenant (or if not, stating
with particularity the reasons why the Premises have not been unconditionally accepted); (4) the amount of any Security Deposit held hereunder; (5) that, so far as the party making the certificate knows, the Requesting Party is not in default under any provisions of this Lease, if such is the case, and if not, identifying all defaults with particularity; and (6) any other matter reasonably requested by the Requesting Party. Any such statement may be conclusively relied upon by any prospective lender, purchaser of the Building or the third party designated by the Requesting Party. In addition to Landlord’s other rights and remedies with respect to this Lease, if Tenant fails to deliver to Landlord an executed estoppel certificate within fifteen (15) days after Landlord’s written request therefor, than beginning on the sixteenth (16th) day after such request, Tenant shall pay to Landlord, as additional rent hereunder, an amount equal to Three Hundred Dollars ($300.00) per day until such time as Tenant delivers such executed estoppel certificate to Landlord.

Section 29.5 Attorneys’ Fees. In the event Landlord institutes an action for the collection of any Rent or other sums due or to become due hereunder, or recovery of the possession of the Premises or in the event an action is filed by either party to enforce or interpret any provisions of this Lease, then the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys’ fees at trial or on appeal of such suit or action, in addition to all other sums provided by law. The prevailing party shall be determined under California Civil Code §1717(b)(1) or any successor statute.

Section 29.6 Severability. If any provision of this Lease proves to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected by such finding, and in lieu of each provision of this Lease that is illegal, invalid, or unenforceable a provision will be added as a part of this Lease as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 29.7 Written Amendment Required. No amendment, alteration, modification of, or addition to the Lease will be valid or binding unless expressed in writing and signed by Landlord and Tenant. Tenant agrees to make any modifications of the terms and provisions of this Lease required or requested by any lending institution providing financing for the Building, Land or Project, as the case may be, provided that no such modifications will materially adversely affect Tenant’s rights and obligations under this Lease.

Section 29.8 Entire Agreement. This Lease, the exhibits and addenda, if any, contain the entire agreement between Landlord and Tenant. No promises or representations, except as expressly contained in this Lease, have been made to Tenant respecting the condition or the manner of operating the Premises, the Building, or the Project. The taking possession of the Premises by Tenant shall be conclusive evidence that Tenant accepts the Premises and the Building and that, except to the extent set forth in a written “punchlist” or other agreement between Landlord and Tenant, the same were good and satisfactory condition at the time such possession was so taken.

Section 29.9 Captions. The captions of the various articles and sections of this Lease are for convenience only and do not necessarily define, limit, describe, or construe the contents of such articles or sections.
Section 29.10 Brokers. Landlord and Tenant respectively represent and warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Premises except the Broker named in Section 1.1, if any. Each of them will indemnify the other against and hold the other harmless from any claims for fees or commissions from anyone with whom either of them has consulted or negotiated with regard to the Premises except the Broker. Based on the foregoing, Landlord will pay the Broker named in Section 1.1, if any, a commission due with respect to this Lease pursuant to a separate agreement.

Section 29.11 Governing Law. This Lease will be governed by and construed pursuant to the laws of the State of California.

Section 29.12 No Easements for Air or Light. Any diminution or shutting off of light, air, or view by any structure that may be erected on lands adjacent to the Building will in no way affect this Lease or impose any liability on Landlord.

Section 29.13 Tax Credits. Landlord is entitled to claim all tax credits and depreciation attributable to Landlord funded leasehold improvements in the Premises. Promptly after Landlord’s demand, Landlord and Tenant will prepare a detailed list of the leasehold improvements and fixtures and their respective costs for which Landlord or Tenant has paid. Landlord will be entitled to all credits and depreciation for those items for which Landlord has paid by means of any Tenant Improvement Allowance or otherwise. Tenant will be entitled to any tax credits and depreciation for all items for which Tenant has paid with funds not provided by Landlord.

Section 29.14 Counterparts. This Lease and any amendment hereto may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together will constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Lease or any amendment attached thereto. Facsimile signatures to this Lease or any amendment shall be binding upon the parties and the parties agree to exchange ink-signed originals within three (3) business days after the date of this Lease or any amendment.

Section 29.15 Binding Effect. The covenants, conditions, and agreements contained in this Lease will bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors, and, except as otherwise provided in this Lease, their assigns.

Section 29.16 Confidentiality. It is hereby agreed that the terms and provisions of this Lease are confidential and, as such, may not be disclosed to any individual or entity without the express written consent of Landlord; provided, Tenant shall have the right to disclose the terms and provisions of this Lease to Tenant’s attorneys, tax advisors, accountants, financial advisors and investors without the consent of Landlord but who shall similarly be subject to Tenant’s obligation hereunder to keep the terms and conditions hereof confidential. Any disclosure without such consent shall be deemed a material default of the terms of this Lease.

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Section 29.17 Approval. Except as may be specifically otherwise provided in this Lease, reference in this Lease to “approval,” “consent,” “judgment” and “satisfactory” shall not be interpreted as justifying arbitrary rejection, but rather shall connote a reasonable application of judgment taking into account long-term leasing practices and commercial customs relating to major real estate transactions.

Section 29.18 Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in San Francisco, California, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. Pacific time.

Section 29.19 Construction of Terms. Wherever used in this Lease, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word “Lease” shall mean this Lease and any schedules or supplements hereto. Whether or not specifically stated in any provision of this Lease, reference herein to (i) any law, statute, ordinance, code, rule, regulation or the like shall mean and included any and all modifications, amendments and replacements thereof, (ii) the phrase “including” shall mean “including without limitation” and (iii) any right of Landlord shall mean unless expressly provided therein to the contrary, such right without any corresponding obligation, (iv) “or” is not exclusive, (v) “hereunder” “herein”, “hereof” and the like refer to this Lease as a whole, (vi) “Article”, “Section”, “Schedule” and “Exhibit” refer to Articles, Sections, Schedules and Exhibits of this Lease, (vii) terms defined in the singular shall have a correlative meaning when used in the plural and vice versa, (viii) a reference to a law includes any amendment, modification or supplement to, or replacement of, such law, (ix) a reference to a document shall mean such document as the same may be amended, modified or supplemented from time to time in accordance with its terms, (x) “Tenant” shall mean Tenant and any subsequent holder or holders of this Lease, (xi) “Landlord” shall be limited to and mean only the owner or mortgagor in possession at the time in question and in the event of any sale, assignment or transfer of its interest in the Project, such assigning owner or mortgagor in possession shall upon such sale, assignment or transfer automatically and without further agreement be released and discharged from all covenants, conditions and agreements of the Landlord accruing under this Lease from and after the date of such sale, assignment or transfer, and such covenants, conditions and agreements accruing thereafter shall thereupon and thereafter be binding only upon each new owner or mortgagor in possession of the Project, until its interest in the Project is sold, assigned or transferred and (xii) pronouns of any gender shall include the other gender; and either the singular or plural shall include the other.

Section 29.20 Waivers. (a) Jury Trial. To the extent enforceable, Landlord and Tenant waive the right to a trial by jury in any action, counterclaim, proceeding or litigation arising out of, under or in connection with, or related to, the subject matter of this Lease. This waiver is knowingly, intentionally, and voluntarily made by Tenant and Tenant acknowledges that neither Landlord nor any person acting on behalf of Landlord has made any representations of fact to induce this waiver of trial by jury or in any way to modify or nullify its effect. Tenant further
acknowledges that it has been represented (or has had the opportunity to be represented) in the negotiation and execution of this Lease and in the making of this waiver by independent legal counsel, selected of its own free will, and that it has had the opportunity to discuss this waiver with counsel.

(b) Statutory Waivers. Tenant hereby waives the benefits of: (i) Sections 1932 and 1933(4) of the California Civil Code (pertaining to the termination of a hiring); (ii) Sections 1941 and 1942 of the California Civil Code (pertaining to the obligations of a landlord to maintain premises and the rights of a tenant to make certain repairs or terminate a lease); (iii) Section 1945 of the California Civil Code (pertaining to renewal of a lease by acceptance of rent); (iv) Section 1950.7 of the California Civil Code (pertaining to security for the performance of a rental agreement); (v) Section 1995.310 of the California Civil Code (pertaining to remedies for withholding of consent to transfer of a leasehold); (vi) Section 1263.260 of the California Code of Civil Procedure (pertaining to the removal of improvements upon condemnation); and, (vii) Section 1265.130 of the California Code of Civil Procedure (pertaining to the termination of a lease upon condemnation).

Section 29.21 Consequential Damages. In no event shall Landlord be liable for any consequential, special, punitive or indirect loss or damage which Tenant may incur or suffer in connection with this Lease or any services to be performed or provided pursuant hereto.

Section 29.22 Limitation of Liability. Tenant shall look solely to the estate and interest of Landlord, its successors and assigns, in the Project (including rent and insurance proceeds of the Project) for the collection of a judgment (or other judicial process) requiring the payment of damages or money by Landlord, and no other property or assets of Landlord or any member, partner, shareholder, joint venturer or other beneficial owner of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant’s remedies under or with respect to either this Lease, the relationship of Landlord and Tenant hereunder or Tenant’s use and occupancy of the Premises.

Section 29.23 Lender Contingency. This Lease is contingent upon the approval of Landlord’s lender, which approval Landlord shall request promptly after the mutual execution hereof by both parties. In conjunction with Landlord’s request for approval, Landlord shall also request that Lender execute the SND, provided Tenant has executed the same and paid the applicable fees, if any, in connection therewith. If such approval is not obtained within twenty (20) days after the date this Lease is countersigned by the Landlord and returned to the Tenant, either party may, by Notice to the other given after the expiration of such twenty (20) day period, declare this Lease to be null and void and of no force or effect.

Section 29.24 Financial Statements. Upon Notice from Landlord, which may not be given more than once each calendar year, Tenant shall provide, within fifteen (15) business days, audited financial statements prepared by its regularly retained certified public accountant. In the event that Tenant does not have such financial statements generally prepared, Tenant shall provide financial statements prepared in accordance with generally accepted accounting principles consistently and certified by its chief financial officer.
Section 29.25 Control Over Tenant’s Wi-Fi Use.

(a) Wi-Fi. Tenant shall have the right to install, at its sole cost and expense, a wireless intranet, Internet, and communications network (also known as “Wi-Fi”) utilizing IEEE 802.XX protocols within the Premises for the use of Tenant and its employees (the “Network”) subject to the provisions of this Article 29 and to the provisions of Article 15. All telecommunications service providers shall be subject to Landlord’s prior written approval.

(b) No Solicitation. Tenant shall not solicit, suffer, or permit other tenants or occupants of the Building to use the Network or any other communications service, including, without limitation, any wired or wireless Internet service that passes through, is transmitted through, or emanates from the Premises.

(c) Interference. Tenant agrees that the Network, Tenant’s communications equipment and the communications equipment of Tenant’s service providers located in or about the Premises or installed in the Building to service the Premises including, without limitation, any antennas, switches, or other equipment (collectively, “Tenant’s Communications Equipment”) shall be of a type and, if applicable, a frequency that will not cause radio frequency, electromagnetic, or other interference to any other party or any equipment of any other party including, without limitation, Landlord, other tenants, or occupants of the Building. Landlord reserves the right to cause Tenant to operate on a channel or frequency band that Landlord selects, in its sole discretion. In the event that Tenant’s Communications Equipment causes or is believed by Landlord to cause any such interference, upon receipt of notice from Landlord of such interference, Tenant will promptly take all steps necessary to correct and eliminate the interference. If the interference is not eliminated within 24 hours (or a shorter period if Landlord believes a shorter period to be appropriate) then, upon notice from Landlord, Tenant shall use other channels or frequencies as determined solely by Landlord, or, at Landlord’s election, shut down the Tenant’s Communications Equipment pending resolution of the interference (with the exception of intermittent testing upon prior notice to, and with the prior approval of, Landlord). Landlord shall have no obligation or liability with respect to any interruption, curtailment or discontinuance of telecommunications services.

(d) Arbitration. If there is a dispute between Landlord and Tenant as to any such interference, then either party may submit such dispute to arbitration in accordance with the terms of Article 28, except that the chosen arbitrator(s) shall be (an) engineer(s) having at least five (5) years of experience in telecommunications.

(e) Maintenance. Tenant shall maintain Tenant’s Telecommunications Equipment in good order and repair at its sole cost and expense.

(f) Acknowledgment. Tenant acknowledges that Landlord has granted and/or may grant lease rights, licenses, and other rights to other tenants and/or occupants of the Building and to telecommunications service providers.

Section 29.26 Notices. When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including notices.
required by California Code of Civil Procedure §1161, or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) shall replace and satisfy the statutory service-of-notice procedures, including those required by California Code of Civil Procedure §1162 or any similar or successor statute.

ARTICLE 30
EXTENSION OPTION

Section 30.1 Extension Option. Tenant shall have the option (herein, the “Extension Option”) to extend the term of this Lease for an additional term of five (5) years (herein, the “Extension Term”) to commence on the day following the Expiration Date and to terminate five (5) years thereafter, provided that Tenant is not in default of any provision of this Lease and has not subleased more than fifty percent (50%) of the area of the Premises during any portion of the two (2) Lease Years prior to the Expiration Date. Such extension shall be upon the same terms and conditions as contained in this Lease except that (i) the Monthly Rent shall be the “Fair Market Rent” as of the date of “Tenant’s Notice” (as hereinafter defined), determined pursuant to Section 30.2; (ii) there shall be no Landlord’s Work, Tenant Improvement Allowance, free rent or other related concessions granted for such extension; (iii) the Base Year for Operating Expenses shall be the calendar year in which the Extension Term commences; (iv) the Base Year for Taxes shall be the calendar in which the Extension Term commences; and (v) there shall be no further option to extend. In order to exercise the Extension Option, Tenant shall give notice to Landlord ("Tenant’s Notice") of such exercise not later than twelve (12) months prior to the Expiration Date, time being of the essence. In order for Tenant’s exercise to be effective, at the time it gives such Tenant’s Notice and at the time the Extension Term is to commence, there shall not, at Landlord’s option, be an outstanding Event of Default under this Lease. If Tenant fails to exercise its Extension Option within the time period provided herein, said time being of the essence, Tenant shall be deemed to have waived its Extension Option without any further notice from Landlord and Landlord shall be free to lease such space upon such terms as Landlord may elect in its sole discretion.

Section 30.2 Determination of Rent. Following Tenant’s Notice, but no later than nine (9) months prior to the Expiration Date, Landlord shall give Tenant notice ("Landlord’s Notice") of Landlord’s determination of the “Fair Market Rent” (as hereinafter defined) for the extension term. For the purposes of this Article, the term “Fair Market Rent” shall mean the product of (i) annual fair market rental rate per square foot for comparable space in the Building and in other comparable first-class office buildings in the San Francisco, California central business district paid by tenants pursuant to renewal leases similar to this Lease and taking into account rent concessions then being granted, if any, for such leases, for comparably improved space for a term of five (5) years multiplied by (ii) the rentable square foot area of the Premises based upon Landlord’s then applicable standards for measuring rentable square footage in the Building. Tenant shall have the right to contest Landlord’s determination by written notice to Landlord (herein, the “Objection Notice”) given within thirty (30) days of receipt of Landlord’s Notice, time of the essence. If Tenant shall desire to contest such determination, Tenant shall give Landlord an Objection Notice within such thirty (30) day period, time of the essence, which Objection Notice shall state Tenant’s determination of the Fair Market Rent. If Tenant shall send
an Objection Notice to Landlord, Tenant’s exercise of the Extension Option shall nevertheless be valid and binding, but Landlord and Tenant shall proceed to determine the Fair Market Rent, as follows. Landlord and Tenant shall negotiate in good faith for a period of thirty (30) days after Landlord’s receipt of the Objection Notice to attempt to resolve the Fair Market Rent. In the event that the determination of Fair Market Rent shall not be resolved by the date of the then pending Expiration Date, Tenant shall pay the Monthly Rent as set forth in Landlord’s Notice pending the resolution of such dispute. In the event that it is determined that the Fair Market Rent is less than the Rent Tenant has been paying, Landlord shall reimburse or credit Tenant for the difference.

Section 30.3 Dispute Resolution. In the event that the parties are unable to agree upon the Fair Market Rent within thirty (30) days of Landlord’s receipt of the Objection Notice, such Fair Market Rent shall be determined in accordance with the foregoing definition by two (2) qualified appraisers, one selected by each of the parties. Each party shall send the other Notice of its choice of appraiser within thirty (30) days of Landlord’s receipt of Objection Notice. Failure by either party to send such Notice within such thirty (30) day period shall mean that the other party’s determination of Fair Market Rent is accepted. If the two (2) appraisers agree upon such Fair Market Rent, such decision shall be conclusive and binding upon the parties. Except as hereinafter provided, if the two (2) appraisers cannot agree upon such rent within sixty (60) days after the date upon which both have been appointed, the two (2) appraisers shall then select a third appraiser within ten (10) days thereafter. The third appraiser shall within thirty (30) days select the value determined by either Landlord’s or Tenant’s appraiser as being in his/her professional opinion closest to the Fair Market Rent of the Premises. If the rent determined by Landlord’s and Tenant’s appraisers are not more than ten percent (10%) foot apart, for the purposes of this Article, the Fair Market Rent shall be deemed to be the average of the two (2) rents. The appraisers shall be licensed real estate brokers or Members of the Appraisal Institute, who are disinterested and are currently practicing in San Francisco, California with at least ten (10) years of experience in leasing or appraising properties similar to the Building. Each party shall pay the fees charged by the appraiser it selects and the fees of the third appraiser, if one is required, shall be borne equally. The foregoing agreement to arbitrate shall be specifically enforceable and shall be subject to the applicable provisions of Article 28.

ARTICLE 31
RIGHT OF FIRST OFFER

Section 31.1 Tenant shall have the one-time right, on and subject to the terms and conditions contained in this Article 31, to lease the balance of the office space on the fifth (5th) floor of the Building which may become available during the Term (herein, the “Additional Space”). Tenant’s option to lease the Additional Space shall only be effective upon, and in strict compliance with, the following terms and conditions:

(a) Tenant shall not, at Landlord’s option, be in default of any of the terms, covenants or conditions of this Lease (beyond any applicable notice and cure periods) either on the date of “Landlord’s Availability Notice” or on the date of “Tenant’s Acceptance Notice” (as such quoted terms are hereinafter defined);
(b) Tenant shall not have subleased more than thirty-five percent (35%) of the area of the Premises;

(c) There shall be not less than three (3) full years remaining in the Term (unless Tenant shall then have any outstanding options to extend or renew the Term of this Lease and unconditionally agrees to exercise such option) and Tenant shall not have exercised any option to cancel or terminate this Lease in whole or in part if any such option is contained in this Lease;

(d) Tenant shall have the right to lease all, but not less than all of the Additional Space, as and when it becomes available and only for a term which expires on the expiration date of this Lease and not for more or less than such period;

(e) Tenant shall accept the Additional Space “as is” in a broom clean condition without any contribution to any alterations by Landlord;

(f) Annualized Monthly Rent for the Additional Space shall be “Fair Market Additional Space Rent” as of the “Availability Date” (as such quoted terms are hereinafter defined) of such space;

(g) The rent commencement date for the Additional Space shall be the date on which vacant possession of such Additional Space is tendered to Tenant;

(h) Tenant’s Share of Operating Expenses and Taxes for the Additional Space shall be determined by dividing the rentable area of such Additional Space by the rentable square foot area of the Building;

(i) Should Tenant exercise its option to lease the Additional Space, Tenant shall be required to deposit with Landlord an additional Security Deposit in an amount equal to the same number of months of Monthly Rent for the Additional Space as is then on deposit under this Lease with respect to the balance of the Premises, if any, and such additional Security Deposit shall be subject to the same percentage reduction as the original Security Deposit provided in Section 23.5; and

(j) The Additional Space shall be deemed available if, and only if, the lease for such Additional Space is terminated or expires, the Additional Space is or shall become vacant, and Landlord has not, or will not, renew or extend the term of the lease(s) of the existing tenant(s) of such Additional Space, whether or not in accordance with the terms of a renewal or extension option contained in such tenant(s) lease(s). Tenant’s option to lease the Additional Space is further subject and subordinate to the rights of other tenants to lease such space and is conditioned on any tenant(s) who have rights to lease such Additional Space having waived all such rights. The only tenants who have rights to lease such Additional Space as of the Lease Date are Orrick, Herrington and Sutcliffe, LLP and WSP Flack & Kurtz.

Section 31.2 If Tenant fails or declines to exercise its right to lease the Additional Space then available in strict accordance with the terms of Section 31.1, TIME BEING OF THE ESSENCE, Tenant shall have no further right to lease such Additional Space and Landlord shall be free to lease such Additional Space on any terms it shall decide in its sole discretion.
Section 31.3 Landlord shall give prompt Notice to Tenant of the availability of any Additional Space which Tenant still has a right to lease pursuant to this Article 31 (“Landlord’s Availability Notice”). Landlord’s Availability Notice shall set forth Landlord’s determination of the Fair Market Additional Space Rent and other applicable rental terms for such Additional Space. For the purposes of this Section, the term “Fair Market Additional Space Rent” shall mean the annual fair market rent per square foot, additional rent and other rental terms for comparable space in the Building and in other comparable first-class office buildings in the downtown San Francisco, California central business district paid by tenants of comparable financial standing to Tenant for leases similar to this Lease, as applicable to the Additional Space and taking into account the presence or absence of work allowances and rent concessions or similar items, if any, then being granted, for such leases. Any such Landlord’s Availability Notice shall also state the date of availability of such Additional Space (the “Availability Date”). Landlord’s Availability Notice will specify an Availability Date which is not less than three (3) months after the date of such Landlord’s Availability Notice if such Notice relates to Additional Space which will become available upon the regularly scheduled expiration date of the existing lease then in effect for such Additional Space. In the event of the premature termination of a lease affecting any Additional Space, however, Landlord’s Availability Notice shall specify the Availability Date of such Additional Space without regard to any such minimum notice requirement. In either event, Tenant shall have ten (10) days after the date of receipt of any Landlord’s Availability Notice within which to give written notice (“Tenant’s Acceptance Notice”) to Landlord of its election to lease such Additional Space, TIME BEING OF THE ESSENCE. Tenant shall indicate in Tenant’s Acceptance Notice to Landlord whether it either (i) accepts Landlord’s determination of Fair Market Additional Space Rent; or (ii) elects to arbitrate Landlord’s determination of Fair Market Additional Space Rent in accordance with the procedure described in Section 30.3 above (and for purposes of arbitrating Fair Market Additional Space Rent, references therein to “Fair Market Rent” shall be deemed to refer to “Fair Market Additional Space Rent” and other terms shall similarly be appropriately conformed). If Tenant elects to arbitrate Landlord’s determination of Fair Market Additional Space Rent, Tenant’s Acceptance Notice shall also set forth Tenant’s determination of Fair Market Additional Space Rent. Any Tenant’s Acceptance Notice, once given, shall be irrevocable and shall be deemed to bind Landlord and Tenant to the leasing of the Additional Space, whether Tenant accepts Landlord’s determination of Fair Market Additional Space Rent or elects to arbitrate such determination and shall further be deemed to constitute Tenant’s waiver of any option to cancel or terminate this Lease in whole or in part. If Tenant fails to give Landlord its Tenant’s Acceptance Notice, TIME OF THE ESSENCE, within ten (10) days after the date of receipt of Landlord’s Availability Notice, Tenant shall be deemed to have elected not to lease the Additional Space, Tenant shall have no further right to lease such Additional Space and Landlord shall be free to lease such Additional Space to any party on any terms it shall decide in its sole discretion. Upon Tenant exercising its right to lease any Additional Space under this Article 31, this Article 31 shall be deemed deleted from this Lease and Tenant shall have no further right to lease any further Additional Space.
Section 31.4 If the tenant in possession of any Additional Space shall fail or refuse to vacate its space upon the expiration of its lease, Landlord shall have no liability therefor, and the Availability Date shall be postponed until such time as such tenant in possession vacates such Additional Space.

Section 31.5 If the Fair Market Additional Space Rent for any Additional Space has not been determined by the Availability Date for such space, Tenant shall pay the rent specified in Landlord’s Availability Notice. If the Fair Market Additional Space Rent, as determined by the arbitrators, is more than the rent Tenant has paid, Tenant shall pay, within ten (10) days after such determination, the deficiency. In the event that the Fair Market Additional Space Rent, as determined by the arbitrators, is less than the rent that Tenant has paid, Tenant shall be entitled to a credit against the next installment(s) of Monthly Rent due with respect to the Additional Space in an amount equal to the excess rent it has paid.

Section 31.6 Once the Fair Market Additional Space Rent has been either agreed upon or determined by the arbitrators, the parties shall enter into an amendment to this Lease for the Additional Space adding the Additional Space to the Premises under this Lease and setting forth all of the terms applicable to the leasing of the Additional Space, provided failure to do so shall not affect the parties’ rights or obligations with respect to such space.

IN WITNESS WHEREOF, Landlord and Tenant have respectively signed and sealed this Lease as of the date first above written.

FITBIT, INC.
a Delaware corporation
By: /s/ James Park
Print Name: James Park
Print Title: President

405 HOWARD, LLC.
a Delaware limited liability company
By: /s/ Richard J. Battista
Print Name: Richard J. Battista
Print Title: Executive Vice President and Treasurer

Tenant’s Tax I.D. Number:
CITY OF SAN FRANCISCO


LOT 030, BLOCK 373

(FORMER LOTS 001, 001A, 002, 004, 022, 023, 024, 025, 026, 028 AND 029)
EXHIBIT C
Rules and Regulations

1. Sidewalks, doorways, halls, stairways, vestibules and other similar areas shall not be obstructed by any Tenant or used by them for purpose other than ingress to and egress from their respective Premises, and for going from one part of the Building to another part.

2. Plumbing fixtures shall be used only for their designated purpose, and no foreign substances of any kind shall be deposited therein. Damage to any such fixture resulting from misuse by Tenant or any employee or invitee of Tenant shall be repaired at the expense of Tenant.

3. Nails, screws and other attachments to the Building (other than for hanging pictures and other customary wall decorations on the interior walls of the Premises) require prior written consent from Landlord. Landlord consents to the use and installation of white boards in the Premises, provided Tenant complies with the applicable terms and conditions of the Lease applicable to Alterations.

4. All contractors and technicians rendering any installation service to Tenant shall be subject to Landlord’s approval and supervision prior to performing services. This applies to all work performed in the Building including, but not limited to, installation of telephone, telegraph equipment, and electrical devices, as well as all installation affecting floors, walls, woodwork, windows, ceilings, and any other physical portion of the Building.

5. Movement in or out of the Building of furniture, office equipment, or other bulky material which requires the use of elevators, stairways, or Building entrance and lobby shall be restricted to hours established by Landlord. All such movement shall be under Landlord’s supervision, and the use of an elevator for such movements shall be made restricted to the Building’s freight elevators. Prearrangements with Landlord shall be made regarding the time, method, and routing of such movement and Tenant shall assume all risks of damage and pay the cost of repairing or providing compensation for damage to the Building, to articles moved and injury to persons or public resulting from such moves. Except to the extent arising from the negligence or willful misconduct of Landlord or its employees, contractors or agents, Landlord shall not be liable for any acts or damages resulting from any such activity.

6. Corridor doors, when not in use, shall be kept closed.

7. Tenant shall cooperate with Landlord in maintaining the Premises. Tenant shall not employ any person for the purpose of cleaning the Premises other than the Building’s cleaning and maintenance personnel.

8. Deliveries of water, soft drinks, newspapers, or other such items to any Premises shall be restricted to hours established by Landlord and made by use of the freight elevators if Landlord so directs.
9. Nothing shall be swept or thrown into the corridors, halls, elevator shafts, or stairways. No birds, fish, or animals of any kind shall be brought into or kept in, on or about the Premises (unless they are service animals).

10. No cooking shall be done in the Premises, except in connection with convenience lunch room or beverage service for employees and guests (on a non-commercial basis) in a manner which complies with all of the provisions of the Agreement and which does not produce fumes or odors. Landlord acknowledges that Tenant may provide catered lunches to its employees and/or invitees, which lunches may require warming and heating of food be electric hot plates. No open flames or sterno cans shall be permitted for any purpose.

11. Food, soft drink or other vending machines shall not be placed within the Premises without Landlord’s prior written consent.

12. Tenant shall not use or keep on its Premises any kerosene, gasoline, or inflammable or combustible fluid or material other than limited quantities reasonably necessary for the operation and maintenance of office equipment.

13. Tenant shall not tamper with or attempt to adjust temperature control thermostats in the Premises. Landlord shall make adjustments in thermostats on call from Tenant.

14. Tenant shall comply with all requirements necessary for the security of the Premises, including the use of service passes issued by Landlord for after hours movement of office equipment/packages, and signing security register in Building lobby after hours.

15. Landlord will furnish Tenant with a reasonable number (i.e., twenty (20)) of initial keys for entrance doors into the Premises and may charge Tenant for additional keys thereafter. All such keys shall remain the property of Landlord. No additional locks are allowed on any door of the Premises without Landlord’s prior written consent and Tenant shall not make any duplicate keys, except those provided by Landlord. Upon termination of the Agreement, Tenant shall surrender to Landlord all keys to the Premises, and give to Landlord the combination of all locks for safes and vault doors, if any, in the Premises.

16. Landlord retains the right, without notice or liability to tenant, to change the name and street address of the Building.

17. Canvassing, peddling, soliciting, and distribution of handbills in the Building are prohibited and each tenant will cooperate to prevent these activities.

18. The Building hours of operation are 8:00 a.m. to 6:00 p.m. Monday through Friday, excluding holidays observed by the Building.

19. Landlord reserves the right to rescind any of these rules and regulations and to make future rules and regulations required for the safety, protection, and maintenance of the Building, the operation and preservation of good order thereof, and the protection and comfort of the tenants and their employees and visitors, provided such rules and regulations do not materially and adversely affect or impact Tenant’s rights under this Lease. Such rules and regulations, when made and written notice given Tenant, shall be binding as if originally included herein.
20. No awning or other projection shall be attached to the outside walls or windows of the Building without the prior written consent of Landlord. No curtains, blinds, shades, drapes or screens shall be attached to or hung in, or used in connection with, any exterior window or door of the Premises, without the prior written consent of Landlord. Any permitted awnings, projections, curtains, blinds, shades, drapes, screens and other fixtures must be of a quality, type, design, color, material and general appearance approved by Landlord, and shall be attached in the manner approved by Landlord.

21. Except as provided in Section 3.4(b) of the Lease, signs on entry doors and directory boards shall be inscribed, painted or affixed for Tenant by Landlord at the expense of Tenant, and shall be of a quality, quantity, type, design, color, size, style, composition, material, location and general appearance as established as the standard for the building. No advertisement, sign, notice or other lettering shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside or inside of the Premises or of the Building, without the prior written consent of Landlord. In the event of the violation of the foregoing, Landlord may remove same without any liability, and may charge the expense incurred by such removal to Tenant.

22. The doors, relights, skylights, windows, sashes and sash doors that reflect or admit light or air into the halls, passageways or other public places in the Building shall not be covered or obstructed by Tenant. Tenant shall not affix signs, posters, pictures, announcements, or any other object on the doors nor on or in windows of the Premises nor shall vases, plants, books, files, parcels, or other articles be placed on the window sills, or in the public portions of the Building.

23. Tenant shall have the right to use in common with other tenants and occupants of the Building the two (2) bicycle rack areas on a first-come, first-served basis, at no additional charge.
AGREEMENT made this     day of             , 2013, by and bet ween 405 HOWARD, LLC, a Delaware limited liability company, maintaining an office at c/o Langley Investment Properties, Inc., 1211 S.W. Fifth Avenue, Suite 2230, Portland, Oregon 97204 (“ Landlord ”) and FITBIT, INC., a Delaware corporation, maintaining an office at                     , Suite     , San Francisco, California (“ Tenant ”).

W I T N E S S E T H :

WHEREAS, Tenant and Landlord entered into a certain lease dated                  , 2013 (the “ Lease ”); and

WHEREAS, Landlord and Tenant desire to specify the Commencement Date and certain other dates referred to in the Lease.

NOW, THEREFORE, the parties hereto do hereby agree as follows:

1. The Commencement Date is agreed to be                     and the Expiration Date is agreed to be                  , 20    .

2. It is further agreed that the Rent Commencement Date is                  , 20    .

IN WITNESS WHEREOF, the parties have hereunto caused to be set their respective hands and seals as of the date first above written.

FITBIT, INC.
a Delaware corporation

By: __________________________
Print Name: __________________
Print Title: __________________

405 HOWARD, LLC.
a Delaware limited liability company

By: __________________________
Print Name: __________________
Print Title: __________________

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EXHIBIT E
Form of Letter of Credit

BENEFICIARY:
405 HOWARD, LLC
C/O LANGLEY INVESTMENT PROPERTIES, INC.
1211 SW FIFTH AVENUE, SUITE 2230
PORTLAND, OREGON 97204

ATTENTION: SCOTT C. LANGLEY

WITH A COPY OF ANY NOTICES SENT TO:
THE ASHFORTH COMPANY
707 SUMMER STREET, 4TH FLOOR
STAMFORD, CONNECTICUT 06901

ATTENTION: MICHAEL POLLACK, ESQ.

APPLICANT:
FITBIT, INC.
150 SPEAR STREET, SUITE 200
SAN FRANCISCO, CA 94105

AS “TENANT”

AMOUNT: US$2,100,000.00 (TWO MILLION ONE HUNDRED THOUSAND AND NO/100 U.S. DOLLARS)

EXPIRATION DATE:  , 20

LOCATION: SANTA CLARA, CALIFORNIA

LADIES AND GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. SVBSF IN YOUR FAVOR. THIS LETTER OF CREDIT IS AVAILABLE BY SIGHT PAYMENT WITH OURSELVES ONLY AGAINST PRESENTATION AT THIS OFFICE OF THE FOLLOWING DOCUMENTS:

1. THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENT (S), IF ANY.

2. YOUR SIGHT DRAFT DRAWN ON US IN THE FORM ATTACHED HERETO AS EXHIBIT “A”.

3. A DATED CERTIFICATION PURPORTEDLY SIGNED BY AN AUTHORIZED OFFICER OR REPRESENTATIVE OF THE BENEFICIARY, FOLLOWED BY HIS/HER PRINTED NAME AND DESIGNATED TITLE, STATING EITHER OF THE FOLLOWING WITH INSTRUCTIONS IN BRACKETS THEREIN COMPLIED WITH:

E-1
(A.) "[INSERT BENEFICIARY’S NAME], THE BENEFICIARY, IS ENTITLED TO DRAW UPON SILICON VALLEY BANK IRREVOCABLE STANDBY LETTER OF CREDIT NO. SVBSF UNDER THAT CERTAIN LEASE, DATED AS OF [INSERT DATE OF LEASE] BY AND BENEFICIARY AS LANDLORD AND FITBIT, INC. AS TENANT (THE “LEASE”)."

OR

(B.) "WITHIN SIXTY (60) DAYS PRIOR TO THE EXPIRATION DATE OF THIS LETTER OF CREDIT BENEFICIARY HAS NOT RECEIVED AN EXTENSION AT LEAST FOR ONE YEAR TO THE EXISTING LETTER OF CREDIT OR A REPLACEMENT LETTER OF CREDIT SATISFACTORY TO THE BENEFICIARY."

THE LEASE AGREEMENT MENTIONED ABOVE IS FOR IDENTIFICATION PURPOSES ONLY AND IT IS NOT INTENDED THAT SAID LEASE AGREEMENT BE INCORPORATED HEREIN OR FORM PART OF THIS LETTER OF CREDIT.

PARTIAL AND MULTIPLE DRAWINGS ARE ALLOWED. THE ORIGINAL OF THIS LETTER OF CREDIT MUST ACCOMPANY ANY DRAWINGS HEREUNDER FOR ENDORSEMENT OF THE DRAWING AMOUNT AND WILL BE RETURNED TO THE BENEFICIARY UNLESS IT IS FULLY UTILIZED.

WE AGREE THAT WE SHALL HAVE NO DUTY OR RIGHT TO INQUIRE AS TO THE BASIS UPON WHICH BENEFICIARY HAS DETERMINED THAT THE AMOUNT IS DUE AND OWING OR HAS DETERMINED TO PRESENT TO US ANY DRAFT UNDER THIS LETTER OF CREDIT, AND THE PRESENTATION OF SUCH DRAFT IN STRICT COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, SHALL AUTOMATICALLY RESULT IN PAYMENT TO THE BENEFICIARY.

THIS LETTER OF CREDIT SHALL BE AUTOMATICALLY EXTENDED FOR AN ADDITIONAL PERIOD OF ONE YEAR, WITHOUT AMENDMENT, FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO THE THEN CURRENT EXPIRATION DATE WE SEND YOU A NOTICE BY REGISTERED MAIL/OVERNIGHT COURIER SERVICE AT THE ABOVE ADDRESS THAT THIS LETTER OF CREDIT WILL NOT BE EXTENDED BEYOND THE CURRENT EXPIRATION DATE. IN NO EVENT SHALL THIS LETTER OF CREDIT BE AUTOMATICALLY EXTENDED BEYOND , 20 , WHICH SHALL BE THE FINAL EXPIRATION DATE OF THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT MAY ALSO BE CANCELED PRIOR TO ANY PRESENT OR FUTURE EXPIRATION DATE, UPON RECEIPT BY SILICON VALLEY BANK BY OVERNIGHT COURIER OR REGISTERED MAIL (RETURN RECEIPT REQUESTED) OF THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS (IF ANY) FROM THE BENEFICIARY TOGETHER WITH A STATEMENT SIGNED BY AN
AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY ON COMPANY LETTERHEAD STATING THAT THE LETTER OF CREDIT IS NO LONGER REQUIRED AND IS BEING RETURNED FOR CANCELLATION.

THIS LETTER OF CREDIT IS TRANSFERABLE ONE OR MORE TIMES, BUT IN EACH INSTANCE ONLY TO A SINGLE BENEFICIARY AS TRANSFEREE AND ONLY UP TO THE THEN AVAILABLE AMOUNT IN FAVOR OF ANY NOMINATED TRANSFEREE THAT IS THE SUCCESSOR IN INTEREST TO BENEFICIARY (“TRANSFEREE”), ASSUMING SUCH TRANSFER TO SUCH TRANSFEREE WOULD BE IN COMPLIANCE WITH THEN APPLICABLE LAW AND REGULATION, INCLUDING BUT NOT LIMITED TO THE REGULATIONS OF THE U.S. DEPARTMENT OF TREASURY AND U.S. DEPARTMENT OF COMMERCE. AT THE TIME OF TRANSFER, THE ORIGINAL LETTER OF CREDIT AND ORIGINAL AMENDMENT(S), IF ANY, MUST BE SURRENDERED TO US AT OUR ADDRESS INDICATED IN THIS LETTER OF CREDIT TOGETHER WITH OUR LETTER OF TRANSFER DOCUMENTATION AS PER ATTACHED EXHIBIT “B” DULY EXECUTED. THE CORRECTNESS OF THE SIGNATURE AND TITLE OF THE PERSON SIGNING THE TRANSFER FORM MUST BE VERIFIED BY BENEFICIARY’S BANK. APPLICANT SHALL PAY OUR TRANSFER FEE OF 1/4 OF 1% OF THE TRANSFER AMOUNT (MINIMUM US$250.00) UNDER THIS LETTER OF CREDIT. ANY REQUEST FOR TRANSFER WILL BE EFFECTED BY US SUBJECT TO THE ABOVE CONDITIONS. HOWEVER, ANY REQUEST FOR TRANSFER IS NOT CONTINGENT UPON APPLICANT’S ABILITY TO PAY OUR TRANSFER FEE. ANY TRANSFER OF THIS LETTER OF CREDIT MAY NOT CHANGE THE PLACE OR DATE OF EXPIRATION OF THE LETTER OF CREDIT FROM OUR ABOVE SPECIFIED OFFICE. EACH TRANSFER SHALL BE EVIDENCED BY OUR ENDORSEMENT ON THE REVERSE OF THE LETTER OF CREDIT AND WE SHALL FORWARD THE ORIGINAL OF THE LETTER OF CREDIT SO ENDORSED TO THE TRANSFEREE.

DRAFT(S) AND DOCUMENTS MUST INDICATE THE NUMBER AND DATE OF THIS LETTER OF CREDIT.

WE HEREBY AGREE THAT DRAFTS DRAWN UNDER AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED UPON PRESENTATION TO: SILICON VALLEY BANK, 3003 TASMAN DRIVE, 2ND FLOOR, MAIL SORT HF210, SANTA CLARA, CALIFORNIA 95054, ATTENTION: GLOBAL FINANCIAL SERVICES – STANDBY LETTER OF CREDIT DEPARTMENT (THE “BANK’S OFFICE”). PRESENTATIONS MAY BE MADE IN PERSON OR BY OVERNIGHT COURIER DELIVERY SERVICE OR BY FACSIMILE ON OR BEFORE OUR CLOSE OF BUSINESS ON OR BEFORE THE EXPIRATION DATE OF THIS CREDIT.

SHOULD BENEFICIARY WISH TO MAKE PRESENTATIONS UNDER THIS LETTER OF CREDIT ENTIRELY BY FACSIMILE TRANSMISSION (IT NEED NOT TRANSMIT THE LETTER OF CREDIT), IT MAY DO SO IN LIEU OF PRESENTING THE PHYSICAL DOCUMENTS OTHERWISE REQUIRED FOR PRESENTATION UNDER THE TERMS OF
THIS LETTER OF CREDIT. PROVIDED HOWEVER, SHOULD IT ELECT TO DO SO, EACH SUCH FACSIMILE TRANSMISSION SHALL BE MADE ON A BUSINESS DAY AT FAX NO. (408) 496-2418 OR (408) 969-6510; AND SIMULTANEOUSLY UNDER TELEPHONE ADVICE TO: (408) 654-6274 OR (408) 654-7127 OR (408) 654-7716 OR (408) 654-3035 AND, ON THE DAY OF SUCH TRANSMISSION, BE IMMEDIATELY FOLLOWED BY BENEFICIARY’S SENDING TO US ALL OF THE ORIGINALS OF SUCH FAXED DOCUMENTS TOGETHER WITH THE ORIGINAL OF THIS LETTER OF CREDIT BY OVERNIGHT MAIL OR COURIER SERVICE TO THE BANK’S OFFICE AS DESCRIBED ABOVE. PROVIDED FURTHER, HOWEVER, WE WILL DETERMINE TO HONOR OR DISHONOR ANY SUCH FACSIMILE PRESENTATION PURELY ON THE BASIS OF OUR EXAMINATION OF SUCH FACSIMILE PRESENTATION, AND WILL NOT EXAMINE THE ORIGINALS.

AS USED HEREIN, THE TERM “BUSINESS DAY” MEANS A DAY ON WHICH WE ARE OPEN AT OUR ABOVE ADDRESS IN SANTA CLARA, CALIFORNIA TO CONDUCT OUR LETTER OF CREDIT BUSINESS. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THE UCP (AS HEREINAFTER DEFINED), IF THE EXPIRATION DATE OR THE FINAL EXPIRATION DATE IS NOT A BUSINESS DAY THEN SUCH DATE SHALL BE AUTOMATICALLY EXTENDED TO THE NEXT SUCCEEDING DATE WHICH IS A BUSINESS DAY.

WE HEREBY ENGAGE WITH YOU THAT DRAFT(S) DRAWN AND/OR DOCUMENTS PRESENTED UNDER AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED UPON PRESENTATION TO SILICON VALLEY BANK, IF PRESENTED ON OR BEFORE THE EXPIRATION DATE OF THIS CREDIT.

IF ANY INSTRUCTIONS ACCOMPANYING A DRAWING UNDER THIS LETTER OF CREDIT REQUEST THAT PAYMENT IS TO BE MADE BY TRANSFER TO YOUR ACCOUNT WITH ANOTHER BANK, WE WILL ONLY EFFECT SUCH PAYMENT BY FED WIRE TO A U.S. REGULATED BANK, AND WE AND/OR SUCH OTHER BANK MAY RELY ON AN ACCOUNT NUMBER SPECIFIED IN SUCH INSTRUCTIONS EVEN IF THE NUMBER IDENTIFIES A PERSON OR ENTITY DIFFERENT FROM THE INTENDED PAYEE.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600 (THE “UCP”).

SILICON VALLEY BANK,  
(FOR S V BANK USE ONLY)  

AUTHORIZED SIGNATURE  

E-4
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<thead>
<tr>
<th>DATE:</th>
<th>REF. NO.</th>
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<tr>
<td>AT SIGHT OF THIS BILL OF EXCHANGE</td>
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<td>PAY TO THE ORDER OF:</td>
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<td>US$</td>
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<td>U.S. DOLLARS</td>
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“DRAWN UNDER SILICON VALLEY BANK, SANTA CLARA, CALIFORNIA, IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER NO. SVBSF |
DATED ___________, 20__ |

TO: SILICON VALLEY BANK |
3003 TASMAN DRIVE |
SANTA CLARA, CA 95054 |

AUTHORIZED SIGNATURE |

GUIDELINES TO PREPARE THE SIGHT DRAFT OR BILL OF EXCHANGE: |
1. DATE INSERT ISSUANCE DATE OF DRAFT OR BILL OF EXCHANGE. |
2. REF. NO. INSERT YOUR REFERENCE NUMBER IF ANY. |
3. PAY TO THE ORDER OF: INSERT NAME OF BENEFICIARY |
4. US$ INSERT AMOUNT OF DRAWING IN NUMERALS/FIGURES. |
5. U.S. DOLLARS INSERT AMOUNT OF DRAWING IN WORDS. |
6. LETTER OF CREDIT NUMBER INSERT THE LAST DIGITS OF OUR STANDBY L/C NUMBER THAT PERTAINS TO THE DRAWING. |
7. DATED INSERT THE ISSUANCE DATE OF OUR STANDBY L/C. |

NOTE: BENEFICIARY SHOULD ENDORS THE BACK OF THE SIGHT DRAFT OR BILL OF EXCHANGE AS YOU WOULD A CHECK. |

IF YOU NEED FURTHER ASSISTANCE IN COMPLETING THIS SIGHT DRAFT OR BILL OF EXCHANGE, PLEASE CALL OUR L/C PAYMENT SECTION AT (408) 654-6274 OR (408) 654-7127 OR (408) 654-3035 OR (408) 654-7716 OR (408) 654-7128.
EXHIBIT “B”

DATE:

TO:  SILICON VALLEY BANK
      3003 TASMAN DRIVE
      SANTA CLARA, CA 95054

      ATTN: GLOBAL FINANCIAL SERVICES
      STANDBY LETTERS OF CREDIT

RE:  SILICON VALLEY BANK IRREVOCABLE STANDBY LETTER OF CREDIT NO.

GENTLEMEN:

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY HEREBY IRREVOCABLY TRANSFERS TO:

__________________________
(NAME OF TRANSFEREE)

__________________________
(ADDRESS)

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY TO DRAW UNDER THE ABOVE LETTER OF CREDIT UP TO ITS AVAILABLE AMOUNT AS SHOWN ABOVE AS OF THE DATE OF THIS TRANSFER.

BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY IN SUCH LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE. TRANSFEREE SHALL HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS RELATING TO ANY AMENDMENTS, WHETHER INCREASES ORextensions OR OTHER AMENDMENTS, AND WHETHER NOW EXISTING OR HEREAFTER MADE. ALL AMENDMENTS ARE TO BE ADVISED DIRECT TO THE TRANSFEREE WITHOUT NECESSITY OF ANY CONSENT OF OR NOTICE TO THE UNDERSIGNED BENEFICIARY.

THE ORIGINAL OF SUCH LETTER OF CREDIT IS RETURNED HEREWITH, AND WE ASK YOU TO ENDORSE THE TRANSFER ON THE REVERSE THEREOF, AND FORWARD IT DIRECTLY TO THE TRANSFEREE WITH YOUR CUSTOMARY NOTICE OF TRANSFER.

SINCERELY,

__________________________
(BENEFICIARY’S NAME)

__________________________
(SIGNATURE OF BENEFICIARY)

__________________________
(PRINTED NAME AND TITLE)

THE NAME(S) TITLE(S), AND SIGNATURE(S) CONFORM TO THAT/THOSE ON FILE WITH US FOR THE COMPANY AND THE SIGNATURE(S) IS/ARE AUTHORIZED TO EXECUTE THIS INSTRUMENT.

WE FURTHER CONFIRM THAT THE COMPANY HAS BEEN IDENTIFIED APPLYING THE APPROPRIATE DUE DILIGENCE AND ENHANCED DUE DILIGENCE AS REQUIRED BY THE BANK SECRECY ACT AND ALL ITS SUBSEQUENT AMENDMENTS

__________________________
(NAME OF BANK)

__________________________
(ADDRESS OF BANK)

__________________________
(CITY, STATE, ZIP CODE)

__________________________
(AUTHORIZED SIGNATURE)

__________________________
(PRINTED NAME AND TITLE)

__________________________
(TELEPHONE NUMBER)
SCHEDULE 2

Pre-Approved Sub-Contractors

ELECTRICAL
- Metropolitan Electric
- McMillian Electric
- Young Electric

PLUMBING
- AR&B
- DPW Inc.
- Critchfield Mechanical, Inc.

SHEET ROCK
- RMR Construction
- California Drywall Company

FRAMING/DEMO
- RMR Construction
- California Drywall Company

PAINTING/WALL COVERING
- Russell Hinton Co.
- Monticelli Co.

HVAC CONTROLS
- Critchfield Mechanical, Inc.
- AR&B

GLASS GLAZING
- Mission Glass Company
- Waiters & Wolf Glass

FIRE SPRINKLERS
- AR&B
- Ayoob & Peery
- Pribuss Engineering

SECURITY SYSTEMS
- McMillan Security

DATA CABLING
- Young Communication
- Metropolitan Electric
- Capitol Communications

ACCESS FLOORING
- Bayside Interiors Inc.
SCHEDULE 3

Hardware Lab Substances

- Isopropyl Alcohol, 99.9% purity
- Solder, 60/40 with flux core
- Solder, 63/37 with flux core
- Solder paste, Chipquik, no clean
- Solder paste, Chipquik, low heat
- Liquid solder flux, no clean
- Liquid solder flux, organic water-soluble
- Rosin-based flux
- Spray paint, aerosol can
- Paint thinner
- Bestine Solvent/Cleaner (for rubber cement)
- Canned compressed air
- Canned refrigerant, electronic cooler
- WD-40 lubricant
- Silicone lubricant
- Acetone cleaner
Flextronics Manufacturing Services Agreement

This Flextronics Manufacturing Services Agreement ("Agreement") is entered into this 19th day of March, 2015 (the "Effective Date") by and between, on the one hand Fitbit International Limited, a company organized under the laws of Ireland, with an address of 70 Sir John Rogerson’s Quay, Dublin 2, Ireland ("Customer") and for purposes of Section 1.3 only, Fitbit, Inc., a company organized under the laws of the State of Delaware, with an address of 405 Howard Street, Suite 550, San Francisco, California 94105 ("Fitbit"), and, on the other hand, Flextronics Sales & Marketing (A-P) Ltd., a company organized under the laws of Mauritius, having an address of Suite 802, St. James Court, St. Denis Street, Port Louis, Mauritius ("Flextronics").

Customer desires to engage Flextronics to perform manufacturing and other related services upon the terms and conditions set forth in this Agreement. The parties agree as follows:

1. DEFINITIONS; SCOPE

1.1. Flextronics and Customer agree that any capitalized terms used herein shall have the meanings set forth in this Agreement and Exhibit 1, which is attached hereto and incorporated herein by reference.

1.2. Each of Customer’s Affiliates may from time to time purchase Products under this Agreement as if it is the “Customer” hereunder. This Agreement will apply to all purchases of the Products by the Customer and/or its Affiliates from Flextronics and/or its Affiliates. Customer shall be liable for each such Affiliate’s compliance with this Agreement and any breach of this Agreement by any such Affiliate. In the event of any breach of this Agreement by any Customer Affiliate, Flextronics shall be entitled to terminate this Agreement for breach in accordance with the provisions hereof, and to pursue all remedies to which Flextronics is entitled as a result of such breach, as if Customer was the party in breach.

1.3. Fitbit hereby unconditionally guarantees and shall be liable for the performance of the terms of this Agreement and the payment of all debts, liabilities, and damages arising from the acts or omissions of Customer or any Affiliates of Customer arising in connection with this Agreement (the “Guaranteed Obligations”). This guarantee is absolute, continuing, unlimited, and independent and will not be affected or released for any reason. Fitbit waives: [*]. Until the Guaranteed Obligations have been paid and performed in full, Fitbit shall not enforce any right of subrogation.

1.4. Flextronics shall ensure that all Flextronics’ Affiliates that manufacture Products or Materials hereunder, procure Materials hereunder, or are otherwise involved in the performance of any of Flextronics’ obligations under this Agreement comply with all terms and conditions of this Agreement. Flextronics shall be liable for each such Affiliate’s compliance with this Agreement and any breach of this Agreement by any such Affiliate. In the event of any breach of this Agreement by any Flextronics’ Affiliate, Customer shall be entitled to terminate this Agreement for breach in accordance with the provisions hereof, and to pursue all remedies to which Customer is entitled as a result of such breach, as if Flextronics was the party in breach.

1.5. The parties hereby terminate that certain interim agreement entered into by the parties dated November 9, 2012 (the “Interim Agreement”), with such termination effective as of the Effective Date. The terms and conditions of the Interim Agreement shall continue to apply as provided therein with respect to all performance, liability, obligations and rights of the parties arising under the Interim Agreement prior to the Effective Date (i.e., products manufactured by Flextronics and shipped to Fitbit from Flextronics prior to the Effective Date shall be governed under the Interim Agreement and Products manufactured by Flextronics and shipped to Fitbit from Flextronics on or after the Effective Date shall be governed by this Agreement).

2. MANUFACTURING SERVICES

2.1. Work. Customer hereby engages Flextronics to perform the Work in accordance with the terms and conditions of this Agreement. “Work” shall mean to procure certain Materials and to manufacture, assemble, test and ship certain products (“Products”) pursuant to the applicable detailed written Specifications. The

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“Specifications” for each Product or revision thereof, shall include the applicable Bill of Materials, designs, schematics, assembly drawings, manufacturing process requirements (including any applicable Material sourcing and quality requirements (including Production Materials) and manufacturing process quality requirements), test specifications, current revision number, and associated Approved Vendor List, each of which shall be as provided by Customer through the PDM System. The Specifications shall be maintained in accordance with the terms of this Agreement and are incorporated herein by this reference. In case of any conflict between the Specifications and this Agreement, this Agreement shall prevail. If either party becomes aware of any such conflict, it shall promptly notify the other party thereof. This Agreement does not include any new product introduction or product prototype services related to the Products. In the event that Customer requires any such services, the parties will enter into a separate agreement or purchase order relating thereto. Flextronics agrees that as of the Effective Date, Flextronics is manufacturing, assembling and shipping Products for Customer only at its location in Doumen, China. Flextronics and Customer may mutually agree from time to time to allow for the manufacture, assembling and shipping of Products at additional Flextronics locations.

2.2. Engineering Changes.

(a) Either party may at any time propose changes to the relevant manufacturing processes, Specifications or the Products by a written Engineering Change Order (each, an “ECO”) to the other party via the PDM System or through another means implemented by Customer and accepted by Flextronics.

(b) The recipient of an ECO will use commercially reasonable efforts to provide a detailed response within [*] working days of receipt. If the ECO is marked or otherwise communicated to the recipient as urgent, the recipient will use all reasonable efforts to provide a detailed response within [*] working day of receipt.

(c) Flextronics will advise the Customer of the likely impact of an ECO (including, delivery scheduling, potential Excess Materials [*], Specifications, manufacturing processes, and Prices) on the provisions of any relevant Purchase Order(s) and/or Forecast.

(d) Flextronics shall not unreasonably withhold, delay or condition its agreement to an ECO and the parties will endeavor to agree and implement all ECOs at the earliest opportunity. Customer may condition or withhold its approval of any ECO proposed by Flextronics in its sole discretion. Notwithstanding the foregoing, no ECO shall be implemented without each party’s prior written consent.

(e) Any Excess Materials [*] resulting from an ECO shall be identified and discussed and the disposition with respect thereto shall be agreed upon by the parties as part of the ECO process. [*] shall be responsible for any such identified Excess Materials [*] resulting from any mutually-agreed ECO.

(f) Each party shall bear its own costs of assessing an ECO. If Flextronics reasonably determines that any ECO request is excessive because the volume of ECO requests during any [*] month period exceeds customary levels, then at such time it shall notify Customer thereof. Following such a notification, the parties shall negotiate in good faith with respect to the allocation of the costs of assessing such ECO. Any costs to implement an ECO (including, as applicable, increases to the costs of Materials, Material handling charges, process and tooling charges, administrative charges, engineering charges, and evaluation and testing costs) will be agreed to by the parties as part of the ECO process and shall be incurred as agreed.

(g) Until an ECO has been approved in writing by both parties in accordance with this Section, including, agreeing to Excess Material [*] liability and allocation of implementation costs related thereto, the parties will continue to perform their obligations under this Agreement without taking account of that ECO. All relevant records relating to ECOs will be maintained by Customer or through another means implemented by Customer.

2.3. Tooling. Customer shall pay for or otherwise obtain, own and consign to Flextronics any tooling and related equipment, including, manufacturing fixtures and jigs, specifically necessary for manufacturing, assembling, and/or testing Products under this Agreement as reasonably determined by the Customer with Flextronics’ input (the “Tooling”). Without Customer’s prior written consent, Flextronics shall not at any time use any Tooling for the production of goods or products or the performance of services for or on behalf of any third party or for any purposes other than that performance of the Work for Customer pursuant to this Agreement. For so long as the Tooling [*]: (i) be responsible for any loss of, or damage to, such Tooling, normal wear and tear excepted; (ii) maintain Tooling in good condition and repair; and (iii) will provide all necessary calibration services for such Tooling. [*] shall be responsible for the costs of routine maintenance with respect to the Tooling. For any costs with respect to the Tooling that [*] shall be responsible for those agreed-upon costs, such as for the non-routine maintenance, repair, calibration and/or replacement of the Tooling. [*] shall be liable for the timely replacement of
any [*] Tooling that is damaged or lost while [*]. Each month Flextronics will provide an asset log accompanied with a depreciation schedule related to the Tooling. Upon Customer’s request (during or after the Term of this Agreement), subject to Customer’s payment of all undisputed amounts due under this Agreement, Flextronics will cooperate with Customer in all ways reasonably necessary to facilitate the Customer-directed destruction, delivery, or other disposition of any Tooling. Flextronics shall carry inventories of spare Tooling at costs to be agreed upon with Customer.

2.4. Non-Recurring Expenses; Software. Customer shall pay for or otherwise obtain, own and consign to Flextronics any software specifically necessary for manufacturing, assembling, and/or testing Products under this Agreement and shall pay for any other non-recurring expenses, in each case as set forth in Flextronics’ quotation approved by Customer or as otherwise pre-approved by Customer in writing. As between Customer and Flextronics, all software that Customer provides to Flextronics shall be Customer’s Intellectual Property as set forth in Section 10.1 and any software (e.g., testing related) that Customer engages Flextronics to develop shall be Customer’s Intellectual Property as provided under Section 10.3.

2.5. Cost Reduction Projects. Flextronics will use commercially reasonable efforts to reduce the Price of the Products, including, by reducing the cost of the Materials. Any Price reduction will be implemented per the quarterly pricing review process set forth in Section 3.6. Any Price reduction that is [*] shall be realized in the Price pursuant to the schedule below. All other Price reductions shall be fully realized in the Price in the [*] in which the price reduction is implemented. If Flextronics incurs any out of pocket costs related to the implementation of the Price reduction, then the parties shall [*]. Customer will in good faith evaluate and approve or disapprove in its sole discretion viable “off-AML” suppliers and alternate parts proposed by Flextronics for the purposes of cost reduction.

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3. PURCHASE ORDERS; FORECASTS; PRICING; PAYMENT

3.1 Purchase Orders; Forecasts. On a quarterly basis, or on a more frequent basis as the parties may mutually agree, Customer will provide Flextronics with updated Purchase Orders and Forecasts for the Products so as to maintain a minimum of rolling [*] months of Forecast coverage at all times, which shall include the following:

(a) Purchase Order(s) for Customer’s Product requirements for the applicable quarter in the form of either: (i) individual Purchase Orders covering such period (each, an “Individual Purchase Order”); or (ii) a blanket Purchase Order (each, a “Blanket Purchase Order”) covering such period, which will also be incorporated into the monthly Product requirements set forth in the Forecast, and under which Customer may issue release orders (each, a “Release Order”) from time to time whereby Customer will identify the specific number of Products and delivery dates therein. Except where otherwise specifically identified herein, the term “Purchase Order” refers to, and includes, Individual Purchase Orders, Blanket Purchase Orders, Release Orders and Risk Buys. If during any quarter the Forecast is adjusted such that the accepted Purchase Order(s) do not cover the Product requirements set forth for such quarter in the Forecast, then Customer shall adjust the Purchase Order(s) to cover such amounts. Customer may approve additional purchases of Materials to cover the difference between the Forecast and the accepted Purchase Orders, or for any other approved reasons, in additional written acknowledgements to Flextronics (each, a “Risk Buy”).

(b) A rolling forecast (each, a “Forecast”) of Customer’s intended purchases of Products for the subsequent [*] month period. Customer will use reasonable efforts to ensure that each Forecast is accurate; provided, however, the parties acknowledge and agree that each such Forecast is a good faith estimate of Customer’s anticipated Product requirements over the applicable period based on information then available to Customer.
Customer’s liability with respect to any Purchase Order and any Forecast shall be as specifically set forth in Sections 4.2, 5.4 and 6.

3.2 Purchase Order Acceptance. Purchase Orders issued by Customer to Flextronics shall be automatically deemed accepted by Flextronics; provided, however, that Flextronics may reject any Purchase Order if the Prices, lead times or other terms of the Purchase Order are inconsistent with this Agreement, or if the Purchase Order would exceed Customer’s then-approved Credit Limit established in accordance with Section 3.8(b). Flextronics will notify the Customer of any such rejection within [*] working days of receipt thereof. If it does not so notify Customer thereof within such time period, then Flextronics shall be deemed to have waived its right to reject the applicable Purchase Order.

3.3 Purchase Order Rejection. If Flextronics rejects a Purchase Order pursuant to Section 3.2, then Flextronics will in the applicable notice inform Customer of the exact reason(s) for rejection and thereafter work with the Customer in good faith to resolve any issues therewith as soon as reasonably practicable under the circumstances. If Flextronics attempts to reject a Purchase Order that is consistent with the terms of this Agreement and fails to resolve such issue within [*] calendar days of its attempted rejection, then: (i) Customer may have the Products that are the subject of such rejected Purchase Order [*]; (ii) Flextronics shall [*]; and (iii) Customer shall have [*] with respect to such Purchase Order, including the Materials that would have otherwise been used to fulfill such Purchase Order. Further, in the event of a [*] pursuant to this Section, then Flextronics will cooperate related thereto in accordance with Section 11.4.

3.4 Purchase Order Precedence. Regardless any of the terms and conditions contained on any of Customer’s Purchase Orders, Flextronics’ sales order confirmation or any other similar documents, the terms and conditions of this Agreement shall govern Customer’s purchases of Products pursuant hereto. For clarity, this Agreement shall supersede and exclude any terms and conditions found on the Customer’s or its Affiliates’ Purchase Orders or Flextronics or its Affiliates’ sales order confirmations, which shall be deemed deleted. Each Purchase Order will describe in more detail the required Product (and any Work) to be provided by Flextronics and will include, at a minimum, the description and Price per unit of Products being ordered, the quantities of Products ordered, Product revision details and such other information as the parties may agree is required. Purchase Orders may be issued in writing, by mail, facsimile, or by other electronic means as agreed to by the parties from time to time.

3.5 Production Disruption. In the event that Flextronics experiences a disruption in its ability to provide Product for [*] consecutive calendar days, Flextronics’ facilities are incapacitated for any reason for [*] consecutive calendar days, or Flextronics has reasonable belief that its facilities will be incapacitated for [*] consecutive calendar days, then Flextronics shall immediately notify Customer and implement Flextronics’ business continuity plan then in place, which Flextronics shall make available for Customer’s review upon request. In the event of such a disruption, then (i) Customer may have the Products that are the subject of such disruption [*]; (ii) Customer may purchase from Flextronics, [*], all or any part of any Materials, Work-In-Progress or Finished Products that Flextronics has on hand, and Flextronics will, at Customer’s request, transfer to Customer any open purchase orders Flextronics has with any Suppliers related to the purchase of Materials; and (iii) [*]; provided however, if Flextronics notifies Customer prior to the [*] then the parties shall [*]. Further, in the event of a [*] pursuant to this Section, then [*] will cooperate related thereto in accordance with Section 11.4.

3.6 Pricing

(a) Prices will be subject to review by the parties on a quarterly basis (and at such other times as may be agreed) per a mutually agreed to quarterly pricing review and reconciliation process.

(b) Changes to Prices, and the manner and timing of their implementation, will be agreed by the parties on a fair and reasonable basis through such quarterly review and reconciliation process.

(c) Prices will be based on the Costs of Materials, actual Material overhead costs, actual cycle time and labor rates, SG&A [*] as of the Effective Date), and profit margin [*] as of the Effective Date) in accordance with the pricing model agreed to by the parties.

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(d) Reduction in Prices will be handled pursuant to Section 2.5 above. Any potential Price increases will be identified by the parties and must be agreed to in writing by the Customer before any implementation thereof; provided, however, that Flextronics and Customer will [*].

(e) The parties shall discuss [*].

(f) All Prices are exclusive of federal, state and local excise, sales, use, value-added, and similar transfer taxes, Customer shall be responsible for all such taxes; provided that, Flextronics shall be solely liable for all taxes on Flextronics’s net income. Flextronics shall not charge Customer for any taxes that are exempted if Customer provides Flextronics with a valid exemption certificate or other acceptable notice from a governmental authority; provided that, Customer bears all costs and pays any required bonds or other amounts necessary for it to obtain and maintain such exemptions.

3.7 Payment. All payments owed by Customer to Flextronics under this Agreement shall be stated and paid in U.S. Dollars. Flextronics will invoice Customer on, or as soon as reasonably practicable after, the delivery date of the applicable Products. Customer agrees to pay the undisputed amounts of any proper invoices it receives pursuant to this Agreement from Flextronics in U.S. Dollars within [*] calendar days of the date of its receipt of the invoice. If Customer disputes any amounts contained on any invoice it will notify Flextronics thereof and the nature of the dispute in writing, in which case Customer shall pay all undisputed amounts and notify Flextronics of the dispute promptly following receipt of the invoice. Thereafter, the parties will work in good faith to resolve such dispute as promptly as practicable. Upon resolution of the dispute, Flextronics shall resubmit an invoice to Customer reflecting such agreed upon resolution, and payment shall be due thereon within [*] calendar days from the date of Customer’s receipt of any such modified invoice.

3.8 Late Payment and Credit.

(a) If Customer fails to make payment on any correct invoice by the due date, Flextronics shall notify Customer in writing of Customer’s failure to pay, and Customer shall have [*] working days from the date of Customer’s receipt of such notice to pay or to dispute all or a portion of the invoice pursuant to the procedures set forth in Section 3.7. If the Customer again fails to make payment or notify Flextronics that such invoice is in dispute within such [*] working day period, then Flextronics may, in addition to its other rights and remedies, upon written notice to Customer, [*] until payment is made or the issue is otherwise resolved.

(b) On not more than a quarterly basis, Customer shall provide Flextronics with reasonably detailed and accurate financial information in order to allow Flextronics to determine the credit limit that Flextronics is willing to extend to Customer for outstanding exposure to Flextronics (the “Credit Limit”). The Credit Limit as of the Effective Date is USD[*]. Customer’s ability to submit Forecasts and Purchase Orders will be limited to the then-current Credit Limit, provided that, if Flextronics reasonably determines that based on the then-current Purchase Orders and Forecast Customer’s total credit exposure with Flextronics is or would be in excess of its then-current Credit Limit, then Flextronics shall provide written notice thereof to Customer [*]. For clarity, Flextronics acknowledges that all non-public information provided by Customer is Confidential Information of Customer and shall be handled at all times in accordance with Section 13.1. Notwithstanding the foregoing, if at any time Customer commences filing quarterly and annual reports with the United States Securities and Exchange Commission, then Customer shall have no further obligation to provide financial information to Flextronics hereunder.

4. MATERIALS PROCUREMENT; CUSTOMER RESPONSIBILITY FOR MATERIALS

4.1. Quarterly BOM & Materials Review. By the end of the [*] week of each quarter, or as otherwise agreed by authorized representatives of the parties from time to time, Customer will provide Flextronics with a report indicating the pricing, Materials Procurement Lead Time, NCNR status, and MOQ for every Material on the Bill of Materials for each Product, and highlighting any changes from the previous quarter. Within [*] weeks of Flextronics receipt of such report, it shall review such report and either confirm its agreement therewith or object thereto and provide Customer reasonable detail as to the basis for objection. If any objection arises, then the parties shall work in good faith to resolve such objection as soon as reasonably practicable under the circumstances in order to finalize the Materials report. Based on such agreed upon Materials report, the parties will then determine the Price (in accordance with Section 3.6), Lead Time and availability for each Product for the upcoming quarter.

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4.2. Materials Commitment; Authorization to Procure Materials. Flextronics shall be entitled to procure Materials in accordance with the agreed Materials Procurement Lead Times, NCNR status and MOQs (along with any economic buy, last-time buy, and other volume purchases, in each case that are pre-approved in writing by an authorized representative of Customer) as required to allow Flextronics to meet the then-current [*] (such purchases of Materials constituting the "Materials Commitment"). For any Materials within the Materials Commitment that become [*] necessary to meet Flextronics' requested delivery dates shall be the sole responsibility of [*]. All Customer consigned Materials that were paid for by Customer shall be, and remain, the property of Customer until.

4.3. Approved Vendors; Materials Procurement. Customer shall provide to Flextronics and maintain an Approved Vendor List or AVL. Flextronics shall purchase the Materials (including the Production Materials) from only those respective Suppliers on the current AVL and shall incorporate only those Materials into the Products and use only those Materials in manufacturing the Products. Flextronics shall not purchase, introduce, substitute or use any other materials from any other supplier (i.e., other than those Materials (including Production Materials) specified by Customer in the Specifications). To use other suppliers or other materials, Flextronics must obtain Customer’s prior consent through an approved Engineering Change Order pursuant to Section 2.2. Upon reasonable request by Customer, Flextronics will provide appropriate financial, testing, reference, and other information relating to the qualifications, quality, financial viability and reliability of any such proposed new supplier. Customer will provide Flextronics and its Affiliates the opportunity to be included on AVLS for Materials that Flextronics can supply, if Flextronics or the applicable Affiliate is competitive with other Suppliers with respect to reasonable and unbiased criteria established by Customer from time to time. If Customer requires Flextronics to procure Materials to procure Materials on terms and conditions with the Supplier that are based on a written agreement between Customer and such Supplier, then Flextronics will do so; provided that, [*]. If as a result of [*] in violation of any such terms and conditions between Customer and any Supplier that have been made known to and acknowledged in writing [*] Supplier to the pricing or availability for any Materials, [*]. If the need for any such an adjustment arises, the parties shall work in good faith to minimize the impact thereof.

4.4. Customer Consigned Materials. Some Materials utilized in the manufacturing of the Products may be consigned by Customer to Flextronics. Flextronics is responsible for timely placement of purchase orders upon Customer for consigned Materials based upon the Materials Commitment. Customer will use commercially reasonable efforts to deliver such ordered Materials to Flextronics’ designated facility on or before Flextronics’ requested delivery date unless Customer notifies Flextronics of an alternative delivery date. For any such orders not placed by [*] within reasonable lead times for such Materials (as established by the parties from time to time) following the parties establishing the applicable Materials Commitment, any [*] necessary to meet Flextronics’ requested delivery dates shall be the sole responsibility of [*]. All Customer consigned Materials that were paid for by Customer shall be, and remain, the property of Customer until Flextronics purchases such Materials from Customer. Flextronics shall provide the appropriate care and control of all Customer consigned Materials in the same way as with Flextronics-owned materials that are of a similar nature, but no less than a commercially reasonable level of care and control, [*] for the timely replacement of any [*] that are damaged or lost while in [*]. Flextronics shall provide Customer a monthly report of Customer consigned Materials in its possession or under its control.

4.5. Materials Warranties. (a) With respect to any Materials that are designed and manufactured by Flextronics and are incorporated into a BOM for any Product, Flextronics agrees that such Materials shall be [*].

(b) Flextronics shall use commercially reasonable efforts to obtain from the applicable Supplier and pass through to Customer the following warranties with regard to the Materials: (i) conformance of the Materials with the Supplier’s specifications and/or the Specifications; (ii) that the Materials will be free from defects in workmanship; (iii) that the Materials will comply with applicable laws, including, the Environmental Regulations; and (iv) that the Materials will not infringe the rights of third parties, including, any intellectual property rights of any third parties. From time to time (but for not more than [*]) upon the request of Customer [*].

4.6. Material Shortage or Discontinuation. Flextronics shall monitor the performance of Suppliers and make data relating thereto available to Customer. In the event that Flextronics becomes aware of any planned discontinuation of any Materials, failure of a Supplier to provide any Materials, or other difficulties in obtaining the Materials necessary to meet the needs of the Materials Commitment, Flextronics shall promptly upon becoming aware thereof inform Customer in writing and [*].
5. SHIPMENTS, SCHEDULE CHANGE, DELAYS, CANCELLATION

5.1. Shipping Requirements. Flextronics will package the Products in accordance with the Specifications and the applicable Purchase Order. Unless otherwise specified in the Specifications or a Purchase Order, Flextronics will package the Products in a manner to provide for (*). The Products, including, without limitation: (a) in accordance with [*]; and (b) [*] for shipment. [*] will mark all containers and packaging with [*]. Each shipment of Product shall include a packing slip that contains at a minimum: (i) the Purchase Order number, (ii) Customer’s part number, (iii) quantity, (iv) date of shipment, and (v) country of origin (i.e., manufacturing location) in compliance with Section 304 of the United States Tariff Act. The Product and its container must also be conspicuously marked with the country of origin (i.e., manufacturing location). Flextronics must provide Customer, and when requested by Customer, a signed certificate stating country of origin (i.e., manufacturing location) by quantity and part number.

5.2. Shipments. In addition to Flextronics’ obligations under Section 5.1 above, Flextronics shall be responsible for (*), which the parties acknowledge have been [*]. Unless otherwise designated in the applicable Purchase Order, all Products delivered pursuant to the terms of this Agreement shall be shipped [*] to Customer’s specified location in [*] or as otherwise designated by Customer in writing from time to time, provided that if such change in shipping location results in an increase in the [*] then the parties shall [*] with respect to a corresponding [*]. Title and risk of loss to the Products shall pass to Customer upon delivery at the stated Incoterms delivery point set forth in the applicable Purchase Order. Customer shall be the importer of record when applicable.

5.3. Quantity Increases and Shipment Schedule Changes.

(a) Flextronics shall use commercially reasonable efforts to: (i) accept [*]; (ii) increase the quantity to be delivered [*]; and/or (iii) [*] of existing Purchase Orders at Customer’s request.

(b) Delays in Shipment. Flextronics will promptly notify Customer in writing of any anticipated delay in meeting the Product delivery dates specified in any accepted Purchase Order stating the reasons for the delay and the new delivery date. In the event of such a delay, Flextronics will promptly notify Customer and provide a recovery plan acceptable to Customer within [*] calendar days. Should Flextronics not fulfill such recovery plan at no fault of Customer and not due to a Force Majeure Event, then at Fitbit’s option it may: (i) take delivery of the Products and [*]; or (ii) have the Products that are the subject of the delay [*] any open purchase orders Flextronics has with any Suppliers related to the purchase of Materials. If Customer elects option (ii), then Flextronics shall [*]; provided however, if Flextronics notifies Customer prior to the [*] then the parties shall [*]. Further, in the event [*] pursuant to this Section, then Flextronics will cooperate related thereto in accordance with Section 11.4.

5.4. Cancellation or Rescheduling of Orders by Customer.

(a) Customer may cancel or reschedule any portion or all of a Purchase Order or Forecast at any time prior to, or after, its acceptance by Flextronics. If Customer cancels or reschedules an accepted Purchase Order or Forecast (or any part thereof) for any reason, then:

   (i) in the case of: (x) [*] as agreed upon in the applicable Purchase Order, and (y) [*] as agreed upon in the applicable Purchase Order, [*] shall be liable to [*] for the [*] for such [*], which is derived by removing from the [*]; and

   (ii) Customer shall also be liable for any [*] that arise directly as a result thereof in accordance with Section 6.

[*] paid for by Customer pursuant hereto will be, at Customer’s sole election [*], either shipped by Flextronics to Customer’s designated location or destroyed.

(b) If any Purchase Order or Forecast (or part thereof) is cancelled due to an expiration or termination of this Agreement, Customer may direct Flextronics to cease its Work hereunder. In the event of such expiration or termination, [*] all relevant amounts specified in Section [*], except that with respect to [*]; provided however, if Flextronics notifies Customer prior to the [*] then the parties shall [*].

(c) Flextronics will use commercially reasonable efforts to attempt to mitigate the costs described above. All costs of [*] shall be addressed in accordance with Section 6.
6. MATERIALS CLAIMS.

6.1 Certain Definitions.

(a) “Excess Materials” means any Materials that are in [*].

6.2 Disposition of Materials Claims. Within [*] calendar days of the end of each quarter, Flextronics shall provide Customer with a written report setting forth all Materials that Flextronics believes are [*] (as determined in accordance with Section 6.1), including, [*] and all other information reasonably necessary for Customer to determine whether such Material has been [*]; provided that Flextronics may [*]; or (ii) Flextronics previously [*] for pursuant to this Section. Customer shall have [*] calendar days to confirm or dispute Flextronics’ assessment of the existence, amount and value of such Materials. [*], will result in Customer’s right to reject the claim. If Customer rejects the claim for any reason, the parties shall work in good faith to resolve any issues identified by Customer as soon as reasonably practicable under the circumstances. If Customer confirms the Materials claim, then within [*] calendar days of the date on which Customer confirms the Materials claim, the following apply:

(a) With respect to [*], at Customer’s sole option, Customer shall either:

   (i) [*] to continue storing [*] for its storage thereof from the date it confirmed the Materials claim and for so long as the [*] remain in storage. Notwithstanding the foregoing, if the amount of [*] to be stored pursuant hereto is [*] then [*] shall have the right to [*] effective as of the date on which the Materials claim was actually received by [*]. During any such storage period Customer may elect to instead pursue option (ii) or (iii) with respect to such [*]; or

   (ii) Issue to [*] a purchase order and [*] for the [*], and have [*] either (a) [*] as set forth in the purchase order (as reasonably acceptable to [*]), or (b) [*], in either case at [*]; or

   (iii) Issue to [*] a purchase order and [*] for the [*] and instruct [*] to retain possession [*], in which case [*] shall hold and attempt to [*] on a [*] for all amounts of the [*] subsequently used by [*].

(b) With respect to [*] shall issue to [*] a purchase order for [*] either (i) ship [*] as set forth in the purchase order (as reasonably acceptable [*]), or (ii) [*], in either case at [*]. Notwithstanding the foregoing or anything else in this Agreement, [*] that result from [*], and [*] for and instruct [*] promptly following the implementation of [*].

Flextronics shall provide monthly reports regarding the amount of [*] that remain, status thereof, and any other information reasonably requested by Customer relating to the Materials inventories.

6.3 Notices. Notwithstanding Section 13.11, all notices, purchase orders and any other communications required to be made or delivered by either party to the other party pursuant to this Section 6 shall be sent to the representatives of each party as agreed to by the parties from time to time.

6.4 Mitigation. During any period in which liability for Excess Materials [*], Flextronics shall use commercially reasonable efforts to return Materials, or otherwise mitigate the amounts payable by Customer hereunder; provided, however, the foregoing requirement does not extend any of the timeframes established in Section 6.2. In the event Customer fails to pay any amounts as and when due under this Section 6 and Customer fails to cure such non-payment within [*] working days of its receipt of notice thereof from Flextronics, Flextronics will be entitled to [*]. Flextronics shall then submit an invoice [*] for the balance due and Customer agrees to pay the undisputed portion of such invoice within [*] working days of its receipt of the invoice.

7. PRODUCT ACCEPTANCE.

7.1 Prior to shipment, Flextronics shall have tested all Products in accordance with the acceptance criteria and test procedures mutually agreed upon by the parties as set forth in the Specifications (“Acceptance Criteria”). Customer or its designated third party receiving the Products may reject Products that: (a) have been damaged prior to delivery due to [*], or (b) do not meet, [*], as determined on a reasonable basis by Customer or its third party receiving the Products (such rejected Products, the “Rejected Products”).

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7.2 Customer will notify Flextronics in writing of any Rejected Products within [*] calendar days of receipt of such Products. Flextronics will provide Customer with a return materials authorization (RMA) for such Rejected Products within [*] working days of its receipt of such notice. Customer shall return such Rejected Products [*] working days of its receipt of the RMA. Customer shall return all Products [*], to Flextronics’ mutually agreed upon RMA site, and for all shipments of returned Products Customer or Flextronics shall be the importer and/or exporter of record as applicable.

7.3 In inspecting the Products, Customer or its designated third party receiving the Products shall do so in accordance with [*]. Customer shall have the right to reject the [*]. In such an event, an RMA will be issued and the Products returned pursuant to Section 7.2.

7.4 Upon return of the Rejected Products, Flextronics will, as soon as reasonably practical, inform Customer as to whether it agrees with Customer’s determination that the returned Products met the criteria necessary for them to be rejected by Customer (it shall perform such assessment as detailed in Section 8.3). If it agrees with Customer’s rejection of the Products, then, as Customer’s sole remedy and Flextronics’ exclusive obligation, Flextronics shall: (i) at Customer’s option, [*], (ii) [*] for the return shipping of such Products, and (iii) [*]. Notwithstanding the Customer’s right to elect a remedy, if Customer elects [*] is permitted by applicable law, then the parties shall mutually discuss and work in good faith to agree to an appropriate remedy under the circumstances; [*]. In the case of Product replacement, title to returned Products will pass to Flextronics on delivery to Flextronics at the Incoterms point stated in Section 7.2, and title to the replacement Products will pass back to the Customer on re-delivery to the Customer in accordance with Section 5.2. [*]. If Flextronics does not agree with Customer’s rejection of the Products, then the parties will work in good faith to resolve such issues as soon as reasonably practicable under the circumstances. For any Products that were improperly rejected by Customer (including those for which no defects are found), Customer remains responsible for [*]. If during [*] of the Products returned to Flextronics by Customer are found to be improperly rejected, then Flextronics may [*] improperly rejected Products [*].

7.5 In the absence of a notification of rejection, the Customer will be deemed to have accepted Products [*] calendar days after receipt of the applicable Products.

8. MANUFACTURER LIMITED WARRANTY

8.1 During the Warranty Period, Flextronics warrants that: (a) it will have manufactured the Products in accordance with the Specifications, free of defects in workmanship and in accordance with Section 9.1, (b) Flextronics shall not include in any Product any Materials that are not new (during both manufacture and any repair), except to the extent agreed by the parties in writing, and [*]. All such warranties specified herein will survive any inspection, delivery, acceptance, or payment by Customer.

8.2 Customer shall notify Flextronics in writing within a reasonable period of time after discovery of any Products found to not conform to any of the warranties set forth in any of clauses (alone or in any combination) (a), (b) and (c) in Section 8.1 above during the Warranty Period. Customer shall return such Products (or Flextronics manufactured Materials) to Flextronics’ designated repair location [*] working days of its receipt of the RMA. Customer shall return all Products [*], Flextronics’ designated mutually agreed upon RMA site, and for all shipments of returned Products Customer or Flextronics shall be the importer and/or exporter of record as applicable.

8.3 Flextronics will provide Customer with an RMA for any Products being returned hereunder within [*] working days of its receipt of notice from Customer relating thereto. All such returned Products shall include documentation describing the nature of the defect, how it was discovered and under what conditions it occurred (to the extent that Customer has such information). For all returned Product (whether under Sections 7 and/or 8), Flextronics will conduct appropriate failure analysis in order to determine the root cause or failure mode relating to the Product defects or failures and whether such defects or failures are attributable to a single failure mode, relating to workmanship, inadequate or improper testing, or failure to follow manufacturing protocols. Flextronics will complete such analysis as soon as reasonably practical and inform Customer as to whether it agrees with Customer’s determination that the returned Products meet the criteria necessary for them to be rejected under Section 7 and/or covered by the warranties under Section 8. If Flextronics does not agree with Customer’s determination, then the parties will work in good faith to resolve such issues as soon as reasonably practicable under the circumstances. For any Products that were improperly returned by Customer (including those for which no defects are found), Customer remains responsible for [*]. If during [*] of the Products returned to Flextronics by Customer are found to be improperly returned, then Flextronics may [*].
8.4 For any Product found to not conform to any of the warranties set forth in Section 8.1 above during the Warranty Period, as Customer’s [*], Flextronics shall (a) at Customer’s option, [*], (b) [*], and (c) [*]. Notwithstanding the Customer’s right to elect a remedy, if Customer elects a [*] is permitted by applicable law, then the parties shall mutually discuss and work in good faith to agree to an appropriate remedy under the circumstances; provided that [*] result in the Products being repaired to a form that enables it to [*]. In the case of Product replacement, title to returned Products will pass to Flextronics on delivery to Flextronics at the Incoterms point stated in Section 8.2, and title to the replacement Products will pass back to the Customer on re-delivery to the Customer in accordance with Section 5.2. In the case of credit, title to the returned Products shall pass to Flextronics on delivery to Flextronics at the Incoterms point stated in Section 8.2.

8.5 The above warranties will not apply to: (a) [*] except as provided in Sections [*]; (b) [*] to the extent resulting [*] of the Products; (c) any [*] to the extent it has been [*] by any person or entity after [*] to Customer; (d) [*], or (e) [*] the extent resulting [*] to manufacture the Products.

8.6 In performing its obligations hereunder, Flextronics agrees to comply with the requirements set forth in Exhibit 8.6 hereto, [*]. For any breach of the warranty in this Section 8.6, [*]: (a) [*] the affected Products so as to comply with the requirements of Section [*]; (b) [*] manufacturing of the Products so as to comply with the requirements of Section [*]; and (c) [*].

8.7 Customer will provide its own warranties relating to the Products directly to any of its end users or other third parties. Customer will not pass through to end users or other third parties the warranties made by Flextronics under this Agreement. Furthermore, Customer will not make any representations to end users or other third parties on behalf of Flextronics.

8.8 No Representations or Other Warranties . SECTIONS 7 AND 8 SET FORTH FLEXTRONICS’ SOLE OBLIGATION AND LIABILITY, AND THE CUSTOMER’S EXCLUSIVE REMEDIES, FOR CLAIMS BASED ON DEFECTS IN OR FAILURE OF ANY PRODUCT OR SERVICES PROVIDED HEREUNDER AND REPLACES ALL OTHER WARRANTIES, REPRESENTATIONS, AND CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR COMMUNICATION WITH CUSTOMER, AND FLEXTRONICS SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

8.9 Epidemic Failure. In addition to the other remedies set forth in this Section 8, if during any [*] calendar day period greater than [*] of the Products delivered to Customer during such period are found to not conform to any of the warranties set forth in Section 8.1 above (each, an “ Epidemic Failure ”), then Customer will notify Flextronics in writing of the nonconformity. After such notification, Flextronics and Customer will work in good faith to agree to a reasonable plan to carry out the repair or replacement of the affected Products. Upon agreement, Flextronics will pay any [*]; provided that, this does not in any way limit Flextronics’ liability to repair or replace Products found to not conform to any of the warranties set forth in Section 8.1.

9. QUALITY ASSURANCE . Flextronics will maintain quality assurance systems for the control of Material quality (including the Production Materials), Material processing (including the Production Materials), assembly, testing, manufacturing, packaging and shipping in accordance with the Specifications as well as its usual policies and practices. The workmanship standard to be used in manufacturing the Product is IPC-A-610 Rev. C Class II, as published by the Institute for Interconnecting and Packaging Electronic Circuits. Flextronics will successfully maintain ISO 9001 quality standards and certification at all Flextronics facilities utilized in the manufacture of Products or performance of Work for Customer. Flextronics shall proactively pursue [*] Product [*]. Flextronics shall document and make available for Customer’s review Flextronics’ [*]. Without limiting the generality of the foregoing, Flextronics shall (a) notify Customer of any [*] to any manufacturing process or Materials (including the Production Materials) [*]; (b) work [*] any such issues [*] under the circumstances, and (c) provide at [*].

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9.2 Audit. Customer may from time to time, upon agreement between to the parties with respect to the timing, location, and scope of such a review and subject to Flextronics’ normal security and confidentiality requirements, review Flextronics’ facilities and records to confirm Flextronics’ performance in accordance with this Agreement. Flextronics may not unreasonably withhold its agreement to any such timing, location or scope. In order to enable adequate audits by Customer, Flextronics shall maintain all records related to its performance under this Agreement in accordance with Flextronics’ reasonable record-keeping policies, which shall at all times be consistent with legal requirements applicable to Flextronics. Customer shall additionally have the right for its personnel to be present from time to time in Flextronics’ facilities to review and assess the Work being performed pursuant to mutually agreed upon procedures related thereto. Flextronics may not unreasonably withhold its agreement to any such procedures.

9.3 Quarterly Review. The parties will use commercially reasonable efforts to meet quarterly to review Flextronics’ performance under this Agreement, including, Flextronics’ compliance with the quality assurance and workmanship standards described in this Section 9, and to discuss and resolve any issues that may have arisen including those relating to quality, performance, engineering changes, or Excess Materials [*]. Prior to each such meeting, Flextronics shall provide Customer with a written report regarding Flextronics’ performance under this Agreement, including, meeting or exceeding, during the previous quarter, the quality assurance and workmanship standards described in this Section 9, as well as preventive action plans to address any deficiencies.

9.4 Failure Tracking; Traceability. Flextronics will provide a real time work order and failure-tracking system for all process steps in the manufacture of the Products [*]. Detailed information will be provided to the Customer on a daily basis by an agreed upon delivery mechanism to include volume, process yields, defect paretos, cycle and up times, serial number tracking, parent child relationships, debug/root cause etc. The parties shall work in good faith to implement and maintain a system for the traceability and identification of the Products in order to enable Customer to readily identify which Products may be affected by a particular failure (e.g., non-conformity with any warranty or any other defect) and to trace the origin, date, Supplier(s) and any processes associated with the particular failure, non-conformity or defect.

10. INTELLECTUAL PROPERTY LICENSES

10.1 All Intellectual Property (whether existing as of the Effective Date or thereafter developed or licensed) owned by, or licensed to, the Customer will continue to be owned by the Customer and, accordingly, Customer hereby grants to Flextronics a non-exclusive, revocable, non-transferable, non-sublicenseable, royalty-free limited license, to use only that portion of such Intellectual Property as may be necessary for Flextronics to perform its obligations under this Agreement. The foregoing license shall terminate or expire as set forth in Section 11.

10.2 All Intellectual Property (whether existing as of the Effective Date or thereafter developed or licensed) owned by, or licensed to, Flextronics will continue be owned by Flextronics, except as specifically set forth in Section 10.3.

10.3 Any Intellectual Property arising in the course of Flextronics’ performance of this Agreement [*] shall belong to the Customer. Any Intellectual Property belonging to the Customer pursuant to this Section shall be referred to herein as the “Customer Developed Intellectual Property,” and shall be subject to the license granted by Customer to Flextronics pursuant to Section 10.1. Flextronics irrevocably assigns to Customer all right, title and interest worldwide in and to the Customer Developed Intellectual Property, including, copyright, trademark, trade secret, patent, contract and licensing rights. The assignment provided for herein shall be total, perpetual, valid for any and all types of media, in any number of copies, and for any and all types of use. To the extent that under applicable laws any such right, title and interest in and to the Customer Developed Intellectual Property cannot be held by or otherwise assigned to Customer, then Flextronics hereby grants to Customer an exclusive, worldwide, royalty-free and irrevocable license to such Customer Developed Intellectual Property, which shall remain in full force and effect perpetually or for the maximum term allowed by applicable law, with the right to sublicense, for any and all types of use, for an unlimited number of copies and in any type of media. Flextronics agrees to reasonably cooperate with Customer or its designee(s), both during and after the Term, in applying for, obtaining, perfecting, evidencing, sustaining and enforcing any and all Intellectual Property rights in and to the Customer Developed Intellectual Property, and the assignment thereof to Customer or Customer’s designee. Such assistance will include execution of a signed transfer of Intellectual Property rights to Customer or Customer’s designee for all Customer Developed Intellectual Property.

10.4 Except as specifically set forth in Section 10.3 nothing in this Agreement or any Purchase Order grants, or can be capable of granting, to a party (whether directly, indirectly, or by implication, estoppel or otherwise) any rights to any Intellectual Property owned by or licensed to the other party.

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11. **TERM AND TERMINATION**

11.1 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for one (1) year thereafter (the “Initial Term”) until terminated as provided in Section 11.2 or 13.8 (Force Majeure). After the expiration of the Initial Term hereunder (unless this Agreement has been terminated), this Agreement shall automatically renew for separate but successive one-year terms (each, a “Renewal Term,” and collectively with the Initial Term, the “Term”) unless either party provides written notice to the other party that it does not intend to renew this Agreement ninety (90) calendar days or more prior to the end of the current Term.

11.2 **Termination.** This Agreement may be terminated by either party: (a) if the other party defaults in any payment obligation hereunder and such default continues without a cure for a period of ten (10) calendar days from the defaulting party’s receipt of notice thereof, (b) if the other party defaults in the performance of any other material term or condition of this Agreement and such default continues un-remedied for a period of thirty (30) calendar days after the delivery of written notice thereof by the terminating party to the other party, or (c) pursuant to Section 13.9 (Force Majeure). This Agreement may be terminated by Customer for convenience upon ninety (90) calendar days’ written notice to Flextronics. This Agreement may be terminated by Flextronics upon one hundred (180) calendar days’ written notice to Customer.

11.3 **Effect of Expiration or Termination.** Expiration or termination of this Agreement: (a) shall not affect the amounts due under this Agreement by either party that exist as of the date of expiration or termination, (b) Sections 5.4 and 6 shall govern with respect to any liability Customer may have to Flextronics for any [*] in existence as of the date of expiration and termination, and (c) shall not affect Flextronics’ warranties in Section 8 above. Sections 1, 3.4, 3.6, 3.7, 3.8, 3.9, 4.5, 5, 6, 7, 8, and 10-13 are the only terms that shall survive any termination or expiration of this Agreement.

11.4 **Cooperation Upon Termination or other Events.** In the event of expiration or termination of this Agreement or redirection of production pursuant to Sections 3.3, 3.5 or 5.3, Flextronics shall provide reasonable cooperation to Customer to ensure a smooth transition. Flextronics shall return, at [*], all Tooling and other Customer-owned or consigned materials to Customer in good condition, or ship such material to an other destination as specified by Customer. Customer shall determine the manner and procedure for returning or shipping such property. If such material is not returned or shipped according to this Section, Customer will have the right to collect the material at Flextronics plants or offices, and Flextronics agrees to assist Customer in such collection.

12. **INDEMNIFICATION; LIABILITY LIMITATION**

12.1 **Indemnification by Flextronics.** Flextronics agrees to defend, indemnify and hold harmless, Customer and Customer’s Affiliates, and all directors, officers, employees, and agents of Customer and its Affiliates (each, a “Customer Indemnitee”) from and against all claims, actions, losses, expenses, damages or other liabilities, including reasonable attorneys’ fees (collectively, “Damages”) incurred by or assessed against any of the foregoing, to the extent the same arise out of third-party claims relating to:

(a) any actual or threatened injury or damage to any person or property caused, or alleged to be caused, by a Product sold by Flextronics to Customer hereunder, to the extent such injury or damage has been caused by the breach by Flextronics of its warranties set forth in Section 8;

(b) any infringement of the Intellectual Property rights of any third party to the extent that such infringement is caused by a process that Flextronics uses to perform any Work hereunder (e.g., manufacture, assemble and/or test the Products); provided that, Flextronics shall not have any obligation to indemnify Customer if such claim would not have arisen but for Flextronics’ manufacturing, assembly or testing of the Product in accordance with the Specifications; or

(c) any failure of any Product sold by Flextronics hereunder to comply with any Environmental Regulations to the extent that such non-compliance is caused by a process or Production Materials that Flextronics uses to manufacture the Products; provided that, Flextronics shall not have any obligation to indemnify Customer if such claim would not have arisen but for Flextronics’ manufacture of the Product in accordance with the Specifications.
12.2 **Indemnification by Customer.** Customer agrees to defend, indemnify and hold harmless, Flextronics and Flextronics’ Affiliates, and all directors, officers, employees and agents of Flextronics and its Affiliates (each, a “Flextronics Indemnitee”) from and against all Damages incurred by or assessed against any of the foregoing to the extent the same arise out of third-party claims relating to:

(a) any failure of any Product (or Materials contained therein, excluding any Production Materials covered by Section 12.1(c) above) sold by Flextronics hereunder to comply with any governmental requirements and/or Environmental Regulations to the extent that such failure has not been caused by the breach by Flextronics of its warranties set forth in Section 8;

(b) any actual or threatened injury or damage to any person or property caused, or alleged to be caused, by a Product sold by Flextronics to Customer hereunder, but only to the extent such injury or damage has not been caused by the breach by Flextronics of its warranties set forth in Section 8; or

(c) any infringement of the Intellectual Property rights of any third party by any Product to the extent that such infringement is not the responsibility of Flextronics pursuant to Section 12.1(b).

12.3 **Procedures for Indemnification.** With respect to any third-party claims that a party is seeking indemnification for under Section 12, such party shall give the other party prompt notice of the third-party claim and cooperate with the indemnifying party at its expense. The indemnifying party shall have the right to assume the defense (at its own expense) of any such claim through counsel of its own choosing by providing notice within thirty (30) calendar days of receipt of notice of the claim. The party seeking indemnification shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the indemnifying party. The indemnifying party shall not, without the prior written consent of the indemnified party, agree to the settlement, compromise or discharge of such third-party claim, which consent will not be unreasonably withheld or delayed. If any claim for indemnification under this Section 12 is rejected by a party for any reason, then executive officers of Customer and Flextronics shall meet within three (3) business days of the rejection in a bona fide attempt to resolve the matter. Failing a resolution at such meeting, the parties shall have the right to immediately pursue arbitration or litigation as provided below.

12.4 **Sale of Products Enjoined.** Should the use of any Products be enjoined for a cause stated in Section 12.1(b) or 12.2(c) above, or in the event the indemnifying party desires to limit its liability under this Section 12, in addition to its indemnification obligations set forth in this Section 12, the indemnifying party shall, at its option, either: (i) substitute a fully equivalent Product or process (as applicable) not subject to such injunction, (ii) modify such Product or process (as applicable) so that it no longer is subject to such injunction, or (iii) obtain the right to continue using the enjoined process or Product (as applicable). In the event that any of the foregoing remedies cannot be effected on commercially reasonable terms, then, [*]; provided however, if Flextronics notifies Customer prior to the [*] then the parties shall [*]. Any changes to any Products or process must be made in accordance with Section 2.2 above. Notwithstanding the foregoing, in the event that a third party makes a claim of infringement with respect to any Product, but does not obtain an injunction, the indemnifying party shall not be required to substitute a fully equivalent Product or process (as applicable) or modify the Product or process (as applicable) if the indemnifying party obtains an opinion from competent patent counsel reasonably acceptable to the other party that such Product or process is not infringing or that the patents alleged to have been infringed are invalid.

12.5 **No Other Liability.** EXCEPT WITH REGARD TO A BREACH OF SECTION 13.1 OR INDEMNIFICATION PURSUANT TO 8.6, 12.1 OR 12.2, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY “COVER” DAMAGES (INCLUDING INTERNAL COVER DAMAGES WHICH THE PARTIES AGREE MAY NOT BE CONSIDERED “DIRECT” DAMAGES), OR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE ARISING OUT OF THIS AGREEMENT OR THE SALE OF PRODUCTS, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING THE POSSIBILITY OF NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE PARTY HAS BEEN WarnED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE, AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.
13. MISCELLANEOUS

13.1 Confidentiality. Each party acknowledges that, during the performance of this Agreement, it will acquire certain confidential information related to the other party. The exchange of confidential information between the parties pursuant to this Agreement shall be governed by that certain confidentiality agreement (the “Confidentiality Agreement”) entered into between the parties with an effective date of November 17, 2014.

13.2 Anti-Bribery & Anti-Corruption. Each party shall comply with, and shall ensure that its Affiliates comply with, all applicable laws and regulations enacted to combat bribery and corruption, including, the United States Foreign Corrupt Practices Act, the UK Bribery Act, the principles of the OECD Convention on Combating Bribery of Foreign Public Officials, and any corresponding laws of all countries where business or services will be conducted or performed pursuant to this Agreement. Each party shall not, and shall ensure that its Affiliates do not, either directly or indirectly, pay, offer, promise to pay, or give anything of value (including, any amounts paid or credited by Customer and/or its Affiliates to Flextronics) to any person including an employee or official of any government, government controlled enterprise or company, or political party, with the reasonable knowledge that it will be used for the purpose of obtaining any improper benefit or to improperly influence any act or decision by such person or for the purpose of obtaining, retaining, or directing business. Any amounts paid by Customer and/or its Affiliates to Flextronics and/or its Affiliates pursuant to the terms of this Agreement will be for products supplied and/or services actually rendered in accordance with the terms of this Agreement. Each party shall not, and shall ensure that its Affiliates do not accept bribes or kickbacks in any form.

13.3 Use of Party Names is Prohibited; Facility Tours. The existence and terms of this Agreement are Confidential Information (as defined in the Confidentiality Agreement) and protected pursuant to Section 13.1. Accordingly, neither party may use the other party’s name or identity or trademarks or any other Confidential Information in any advertising, promotion or other public announcement without the prior express written consent of that party. Flextronics will require that all non-Customer visitors that tour the Customer manufacturing line or Customer-storage areas of the Flextronics facility enter into a confidentiality agreement with Flextronics; provided that no third-party will be permitted to view the manufacturing process of the Product (or manufacturing of prototypes) without Customer’s written permission, provided further that in no event will any competitor of the Customer be permitted to tour or view the Customer’s manufacturing line, storage areas or the Products.

13.4 Entire Agreement; Severability. This Agreement, including, any and all Exhibits attached hereto which are by this reference deemed incorporated herein, constitutes the entire agreement between the Parties with respect to the transactions contemplated hereby and supersedes all prior agreements, course of dealings, and understandings between the parties relating to such transactions. If the scope of any of the provisions of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of this Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

13.5 Amendments; Waiver. This Agreement may be amended only by written agreement of both parties. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Neither party will be deemed to have waived any rights or remedies hereunder unless such waiver is in writing and signed by a duly authorized representative of the party against which such waiver is asserted.

13.6 Independent Contractor. Neither party shall, for any purpose, be deemed to be an agent of the other party, and the relationship between the parties shall only be that of independent contractors. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.

13.7 Expenses. Each party shall pay their own expenses in connection with the negotiation of this Agreement. In the event a dispute between the parties arises with respect to this Agreement and it is resolved by arbitration, litigation or other proceeding the prevailing party shall be entitled to receive reimbursement for all associated reasonable costs and expenses (including, attorneys’ fees) from the other party, provided that such award is in proportion to the total amount of all claims made by the party on which the party prevails.
13.8 **Insurance.** Flextronics and Customer agree to maintain appropriate insurance (including, any insurance coverage required by law) to cover their respective risks under this Agreement with coverage amounts commensurate with levels in their respective markets. Flextronics specifically agrees to maintain a minimum amount and type of insurance coverage at all times that covers the value of any Finished Products, [*] that Customer may have hereunder, as well as to protect against any loss with respect to any Customer Consigned Materials or Customer owned property that is in the possession or control of Flextronics.

13.9 **Force Majeure.** In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement (other than a payment obligation) due to any act of God, acts or decrees of governmental or military bodies, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, or any other cause beyond the reasonable control of the party invoking this Section (collectively, a “**Force Majeure**”), and if such party shall have used its commercially reasonable efforts to mitigate its effects, such party shall give prompt written notice to the other party, its performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences. Regardless of the excuse of Force Majeure, if such party is not able to perform within [*] consecutive calendar days after such event, the other party may [*]. Any party declaring a Force Majeure event will notify the other party of such event within [*] of the event’s occurrence.

13.10 **Successors, Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives. Neither party shall have the right to assign or otherwise transfer its rights or obligations under this Agreement except with the prior written consent of the other party, not to be unreasonably withheld. Notwithstanding the foregoing, Flextronics may subcontract or assign some or all of its rights and obligations under this Agreement to a Flextronics Affiliate, or, solely with respect to the right to receive payment due from Customer hereunder, Flextronics may assign such right to a third party, in each case upon providing Customer written notice thereof. Customer may assign its rights and obligations under this Agreement to a third party in connection with the transfer or sale of all, or substantially all, of its business related to this Agreement, or in the event of a merger, consolidation, change in control or other similar transaction involving Customer or its Affiliates. Any permitted assignee shall assume all assigned obligations of its assignor under this Agreement. Any purported assignment in violation of this Article shall be void and of no effect.

13.11 **Notices.** All notices required or permitted under this Agreement will be in writing and will be deemed received (a) when delivered personally; (b) when sent by confirmed facsimile; (c) five (5) calendar days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) day after deposit with a commercial overnight carrier. All communications will be sent to the addresses set forth above or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section.

13.12 **Controlling Law; Dispute Resolution; Waiver of Jury Trial.**

The parties hereby establish this dispute resolution process to be followed in the event any disagreement or controversy should arise out of, or concerning, the performance of this Agreement. It is the intent of the parties that any dispute be resolved informally and promptly through good faith negotiation between Customer and Flextronics. Either party may initiate the proceedings by giving written notice to the other party setting forth the particulars of the dispute and calling for a meeting of the parties. The parties agree to meet within ten (10) calendar days of the date of notice to jointly define the scope and a method to remedy the dispute. If these meetings do not resolve the dispute, then executive officers of Customer and Flextronics are authorized to, and will, meet in a bona fide attempt to resolve the matter. Failing such resolution, the parties shall have the right to pursue arbitration below. Neither party shall be obligated to follow this procedure with respect to any breach of the confidentiality provisions of this Agreement or with respect to any dispute resulting from a party’s rejection of a claim for indemnification from the other party under Section 12.

This Agreement shall be governed by and interpreted in accordance with the laws of the state of California and the parties hereby consent to the personal and exclusive jurisdiction and venue of the California state courts and the Federal courts located in Santa Clara County, California. Notwithstanding the foregoing, except with respect to enforcing claims for injunctive or equitable relief or with respect to any dispute resulting from a party’s rejection of a claim for indemnification from the other party under Section 12, any dispute, claim or controversy arising from or related in any way to this Agreement or the interpretation, application, breach, termination or validity

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thereof, including any claim of inducement of this Agreement by fraud will be submitted for resolution by binding arbitration in accordance with the Comprehensive Arbitration Rules & Procedures of JAMS. The Federal Arbitration Act shall govern the arbitrability of all disputes. The arbitration will be held in Santa Clara County, California and it shall be conducted in the English language. Judgment on any award in arbitration may be entered in any court of competent jurisdiction. Notwithstanding the above, each party shall have recourse to any court of competent jurisdiction to enforce claims for injunctive and other equitable relief.

IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES, WHETHER IT RESULTS IN PROCEEDINGS IN ANY COURT IN ANY JURISDICTION OR IN ARBITRATION, THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY, AND HAVING HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, WAIVE ALL RIGHTS TO TRIAL BY JURY, AND AGREE THAT ANY AND ALL MATTERS SHALL BE DECIDED BY A JUDGE OR ARBITRATOR WITHOUT A JURY TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW. To the extent applicable, in the event of any lawsuit between the parties arising out of or related to this Agreement, the parties agree to prepare and to timely file in the applicable court a mutual consent to waive any statutory or other requirements for a trial by jury. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to this Agreement or any transactions hereunder.

13.13 **Even-Handed Construction.** The terms and conditions as set forth in this Agreement have been arrived at after mutual negotiation, and it is the intention of the parties that its terms and conditions not be construed against any party merely because it was prepared by one of the parties. For clarity, the term “includes” or “including” or any equivalent of such terms is non-exclusive and means “includes without limitation,” “including but not limited to,” and equivalent variants of such phrases.

13.14 **Controlling Language.** This Agreement is in English only, which language shall be controlling in all respects. All documents exchanged under this Agreement shall be in English.

13.15 **Counterparts.** This Agreement may be executed in counterparts.

[Rest of Page Intentionally Left Blank – Signatures Follow]
IN WITNESS WHEREOF, the parties have caused this Manufacturing Services Agreement to be duly executed by their duly authorized representatives as of the Effective Date.

Customer: FITBIT INTERNATIONAL LTD.

Signature: /s/ James Park
By: James Park
Title: Director

Fitbit: (for purposes of Section 1.3 only)

Signature: /s/ James Park
By: James Park
Title: CEO

Flextronics: FLEXTRONICS SALES & MARKETING (A-P), LTD.

Signature: /s/ Manny Marimuthu
By: Manny Marimuthu
Title: Director

Signature Page to Manufacturing Services Agreement
Exhibit 1

Definitions

“Acceptance Criteria” shall have the meaning set forth in Section 7.1.

“Affiliates” shall mean, with respect to a party hereto, any legal entity that, directly or indirectly, controls, is controlled by or is under common control with that party. For purposes of this definition, an entity shall be deemed to control another entity if it owns or controls, directly or indirectly, at least fifty percent (50%) of the voting equity of another entity (or other comparable interest for an entity other than a corporation).

[*] shall have the meaning set forth in Section [*].

“Agreement” shall have the meaning set forth in the introductory paragraph.

“Approved Vendor List” or “AVL” shall mean the list of Suppliers currently approved to provide the Materials specified in the Bill of Materials for a Product as specified and controlled in the PDM System.

“Baseline Price” shall have the meaning set forth in Section 5.4.

“Bill of Materials” or “BOM” shall mean a list of the Materials and the quantities of each needed to manufacture the Products being ordered by Customer, in each case as provided by Customer.

“Blanket Purchase Order” shall have the meaning set forth in Section 3.1.

“Confidential Information” shall have the meaning set forth in the Confidentiality Agreement.

“Confidentiality Agreement” shall have the meaning set forth in Section 13.1.

“Customer” shall have the meaning set forth in the introductory paragraph.

[*] shall have the meaning set forth in Section 3.6.

“Customer Controlled Materials” as part of the quarterly pricing review process the parties shall work in good faith to mutually agree upon those Materials that are deemed to be controlled by Customer for the upcoming quarter, with those such Materials being the Customer Controlled Materials for such quarter.

“Customer Developed Intellectual Property” shall have the meaning set forth in Section 10.3.

“Customer Indemnitees” shall have the meaning set forth in Section 12.1.

“Damages” shall have the meaning set forth in Section 12.1.

“ECO” shall have the meaning set forth in Section 2.2.

“Effective Date” shall have the meaning set forth in the introductory paragraph.

“Environmental Regulations” shall mean any laws pertaining to pollution or protection of [*].

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“Epidemic Failure(s)” shall have the meaning set forth in Section 8.9.
“Excess Materials” shall have the meaning set forth in Section 6.1.
“Finished Product” shall mean a Product that has been [*] in each case in accordance with the applicable Specifications.
“Fitbit” shall have the meaning set forth in the introductory paragraph.
“Flextronics” shall have the meaning set forth in the introductory paragraph.
“Flextronics Indemnitee” shall have the meaning set forth in Section 12.2.
“Force Majeure” shall have the meaning set forth in Section 13.9.
“Forecast” shall have the meaning set forth in Section 3.1.
“Guaranteed Obligations” shall have the meaning set forth in Section 1.3.
“Interim Agreement” shall have the meaning set forth in Section 1.5.
“Individual Purchase Order” shall have the meaning set forth in Section 3.1.
“Initial Term” shall have the meaning set forth in Section 11.1.
“Intellectual Property” shall mean all patents, applications for patents, copyrights, mask works, trade secrets and any other intellectual property rights recognized by any jurisdiction.
“Lead Time(s)” shall mean the [*].
“Manufacturer Value Added Amount” shall mean, with respect to a Product, the [*].
“Materials” shall mean components, parts and subassemblies that comprise the Product and that appear on the Bill of Materials for the Product.
“Materials Commitment” shall have the meaning set forth in Section 4.2.
“Materials Procurement Lead Time” shall mean with respect to any particular item of Materials, the longer of (a) [*], or (b) the [*].
“Minimum Order Quantity” or “MOQ” shall mean the minimum order quantity for any Materials as established by the parties in accordance with this Agreement.
“Non-Cancellable, Non-Returnable Materials” or “NCNR” shall mean those Materials that [*].
[*] shall have the meaning set forth in Section [*].
“PDM System” shall mean Customer’s then-current web based Product data management (PDM) system, which is as of the Effective Date hosted by Arena Solutions.
“Price(s)” shall mean the price(s) for the Product or Work as agreed between the parties from time to time in accordance with the terms of this Agreement.
“Product(s)” shall have the meaning set forth in Section 2.1.

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1. **Legal Compliance.** Flextronics shall comply with all applicable federal, state, local, and foreign laws, rules, and regulations applicable to its obligations under this Agreement in the jurisdiction in which such obligations are carried out.

2. **Chemical Substances.** Flextronics shall provide to Customer all globally harmonized systems (GHS) HS safety data sheets (SDS) or other similar documentation relating to the Materials provided to Flextronics by the Suppliers. Flextronics shall use commercially reasonably efforts to obtain English-language GHS SDSs, and to obtain details regarding the hazards presented by any materials designated as trade secrets on any GHS SDS.

3. **Shipment.** All Products and Materials will be prepared for shipment in conformance with all governmental and freight regulations applicable to chemicals and hazardous materials, including regulations regarding fumigation and aeration. All packaging materials, including pallets, shall be free of pests and comply with all applicable regulations regarding wood packaging materials, including, 7 CFR 319.40.

4. **RoHS.** [*] applicable hazardous substance content and exposure regulations applicable to the manufacturing of the Products, including, the Chinese administrative measure on the control of pollution caused by electronic information products (Chinese RoHS) and the EU legislation restricting the use of hazardous substances in electrical and electronic equipment (RoHS Directive 2002/95/EC and RoHS 2 Directive 2011/65/EU), as amended from time to time.

Flextronics shall have processes in place to ensure proper control [*]. In the event Flextronics is supplying a top level assembly, [*].

5. **Regulatory Compliance and Certification of Manufacturing Locations.** Flextronics agrees to maintain all necessary regulatory and governmental certifications agreed to by the parties from time to time to support the manufacture of the Products. These certifications shall initially include: [*], as revised from time to time). Upon request, Flextronics shall provide Customer with all documentation applicable to such certifications. If any new certifications are required that are unique to the manufacture of the Products and are beyond standard factory requirements, the parties shall mutually agree on [*] associated with such additional certifications. Flextronics shall have no responsibility for, and shall not own, any certifications specific to the Products, and such certifications shall be owned by Fitbit.

6. **Product Certifications.** Customer shall obtain and maintain, at [*], all necessary Product certifications, including, certifications necessary to place the CE mark on the applicable Products.

7. **Labor Standards Compliance.** In performance of their respective obligations under the Agreement, Flextronics and Customer shall each comply with all applicable labor laws respective to the locations where the parties perform pursuant to this Agreement. Specifically, Flextronics shall comply with the Fair Labor Standards Act to the extent applicable to Flextronics operations and subsidiaries in the United States.

8. **Homeland Security.** The Customs-Trade Partnership Against Terrorism (C-TPAT) is a program led by United States Customs and Border Protection designed to strengthen private companies’ supply chains with respect to terrorism. In order for a company to achieve C-TPAT certification it and its supply chain need to implement and maintain a security program to ensure the integrity of goods destined for the United States. Accordingly, Flextronics agrees to take any actions necessary to implement and maintain a security program that will enable Customer to achieve C-TPAT certification with respect to the Products.

9. **Conflict Minerals.** In the event that Customer reasonably determines that it will become subject to the disclosure requirements of Section 13(p) to the Securities Exchange Act of 1934, as amended by Section 1502 of the Dodd Frank Wall Street Reform and Consumer Protection Act, Flextronics shall use commercially reasonable efforts to support Customer’s compliance therewith, including assisting Customer to obtain from time to time information from all Suppliers that will allow Customer to determine whether any of the Materials contain Conflict Minerals, and if present, whether such Materials are necessary for the production or functionality of any Product

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and the origin of such minerals (e.g., chain of custody data and smelter data). Such assistance shall include working to obtain written declarations (in an industry accepted format) from the Suppliers with respect thereto and any additional information reasonably required by Customer regarding the diligence each Supplier has conducted in support of such declaration.

10. Compliance Audits. In the event of any audit regarding the Products by any governmental or quasi-governmental authority, any customer of the Products or a certification company (such as UL), Flextronics shall cooperate in good faith with Customer to facilitate such audit and resolve any issues raised by such audit within any required timeframes. Without limiting the generality of the foregoing, in the event a certification company inspector issues a variation notice with regard to the Products or Flextronics manufacturing location, Flextronics agrees to respond to Customer in writing regarding all issues raised in such notice within a reasonable time and work to implement a recovery plan acceptable to the certification company within the required timeframe.

11. Updates/New Regulations. In the event that during the Term there is any amendment to existing, or adoption of any new, federal, state, local, or foreign laws, rules, or regulations applicable to the Products or the parties performance hereunder, including, any new hazardous substance regulations in any country, the parties shall review and work in good faith to make changes to this Agreement and their performance hereunder to allow the parties to comply with such laws, rules or regulations.

12. Information. Flextronics shall supply Customer in a timely manner any and all information or data required by Customer to support its government compliance obligations.
$180,000,000 SENIOR SECURED CREDIT FACILITIES
AMENDED AND RESTATED CREDIT AGREEMENT
dated as of August 13, 2014
among
FITBIT, INC.,
as the Borrower,
THE SEVERAL LENDERS FROM TIME TO TIME PARTIES HERETO,
SILICON VALLEY BANK,
as Administrative Agent, Issuing Lender and Swingline Lender,
SILICON VALLEY BANK and SUNTRUST BANK,
as Collateral Agents,
SUNTRUST BANK and MORGAN STANLEY SENIOR FUNDING, INC.,
as Syndication Agents,
and
SILICON VALLEY BANK, SUNTRUST ROBINSON HUMPHREY, INC. and MORGAN
STANLEY SENIOR FUNDING, INC.,
as Lead Arrangers and Joint Bookrunners
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THIS CREDIT AGREEMENT (this “Agreement”), dated as of August 13, 2014, is entered into by and among (a) FITBIT, INC., a Delaware corporation (the “Borrower”), (b) the several banks and other financial institutions or entities from time to time parties to this Agreement (each a “Lender” and, collectively, the “Lenders”), (c) SILICON VALLEY BANK (“SVB”), as the Issuing Lender and the Swingline Lender, (d) SVB, as administrative agent for the Lenders (in such capacity, the “Administrative Agent”), (e) SVB and SUNTRUST BANK (“SunTrust”), as co-collateral agents for the Lenders (in such capacity, each a “Collateral Agent” and collectively, the “Collateral Agents”), (f) SUNTRUST and MORGAN STANLEY SENIOR FUNDING, INC. (Morgan Stanley), as co-syndication agents for the Lenders (in such capacity, each a “Syndication Agent” and collectively, the “Syndication Agents”), and (g) SVB, SUNTRUST ROBINSON HUMPHREY, INC., and MORGAN STANLEY, as co-lead arrangers and joint bookrunners (in such capacities, collectively, the “Arrangers”).

RECITALS:

WHEREAS, the Borrower, the Existing Lenders (as hereinafter defined), the Administrative Agent, the Collateral Agents, the Issuing Lender and the Swingline Lender are parties to that certain Credit Agreement, dated as of February 27, 2014 (as the same has been amended, restated, supplemented or otherwise modified from time to time prior to the Closing Date, the “Existing Credit Agreement”);

WHEREAS, the Borrower desires to obtain financing to refinance the Subordinated Loan Agreement (as hereinafter defined), as well as for working capital financing and letter of credit facilities;

WHEREAS, the Lenders have agreed to extend a revolving loan facility to the Borrower, upon the terms and conditions specified in this Agreement, in an aggregate amount not to exceed $180,000,000, with a letter of credit sub-facility in the aggregate availability amount of $50,000,000 (as a sublimit of the revolving loan facility) and a swingline sub-facility in the aggregate availability amount of $25,000,000 (as a sublimit of the revolving loan facility);

WHEREAS, each Loan Party has agreed to secure all of its respective Obligations by granting to the Administrative Agent, for the ratable benefit of the Secured Parties, a first priority lien (subject to Liens permitted by the Loan Documents and, with respect to priority, subject to the Intercreditor Agreement) in substantially all of its respective personal property assets (other than any Excluded Assets) pursuant to the terms of the Guarantee and Collateral Agreement and the other Security Documents; and

WHEREAS, each of the Guarantors has agreed to guarantee the Obligations of the Borrower and to secure its respective Secured Obligations by granting to the Administrative Agent, for the ratable benefit of the Secured Parties, a first priority lien (subject to Liens permitted by the Loan Documents and, with respect to priority, subject to the Intercreditor Agreement) in substantially all of such Guarantor’s personal property assets (other than any Excluded Assets) pursuant to the terms of the Guarantee and Collateral Agreement and the other Security Documents.
NOW, THEREFORE, the parties hereto hereby agree that the Existing Credit Agreement shall be amended and restated in its entirety to read as follows (it being agreed that this Agreement shall not be deemed to evidence or result in a novation or repayment and reborrowing of the Obligations under, and as defined in, the Existing Credit Agreement):

SECTION 1
DEFINITIONS

1.1 Defined Terms. As used in this Agreement (including the recitals hereof), the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

“ABR”: for any day, a rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect for such day plus 0.50%, and (c) the Eurodollar Rate for a Eurodollar Rate Loan having an Interest Period of one (1) month plus 1.00%; provided that in no event shall the ABR be deemed to be less than 3.25%. Any change in the ABR due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate.

“ABR Loans”: Loans, the rate of interest applicable to which is based upon the ABR.

“Account Debtor”: any Person who may become obligated to any Person under, with respect to, or on account of, an Account, chattel paper or general intangible (including a payment intangible). Unless otherwise stated, the term “Account Debtor,” when used herein, shall mean an Account Debtor in respect of an Account of the Borrower.

“Accounts”: all “accounts” (as defined in Article 9 of the UCC) of a Person, including, without limitation, accounts, accounts receivable, monies due or to become due and obligations in any form (whether arising in connection with contracts, contract rights, instruments, general intangibles, or chattel paper), in each case whether arising out of goods sold or services rendered or from any other transaction and whether or not earned by performance, now or hereafter in existence, and all documents of title or other documents representing any of the foregoing, and all collateral security and guaranties of any kind, now or hereafter in existence, given by any Person with respect to any of the foregoing. Unless otherwise stated, the term “Account,” when used herein, shall mean an Account of the Borrower.

“Administrative Agent”: SVB, as the administrative agent under this Agreement and the other Loan Documents, together with any of its successors in such capacity.

“Affected Lender”: as defined in Section 2.23.

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

“Agent Parties”: is defined in Section 10.2(d)(ii).

“Agents”: collectively, the Administrative Agent, each Collateral Agent, each Syndication Agent, and each Arranger.

“Aggregate Exposure”: with respect to any Lender at any time, an amount equal to the sum of (a) the amount of such Lender’s Revolving Commitment then in effect or, if the Revolving Commitments have been terminated, the amount of such Lender’s Revolving Extensions of Credit then outstanding, and (b) without duplication of clause (a), the L/C Commitment of such Lender then in effect (as a sublimit of the Revolving Commitment of such Lender).

“Aggregate Exposure Percentage”: with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender’s Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.
“Agreement”: as defined in the preamble hereto.

“Agreement Currency”: as defined in Section 10.19.

“Applicable Margin”: commencing on the date on which the Administrative Agent receives copies of the consolidated financial statements of the Borrower and its Subsidiaries in respect of the first fiscal month of the Borrower ending after the Closing Date, together with a Compliance Certificate in respect thereof as contemplated by Section 6.2(b), the rate per annum set forth under the relevant column heading below for the applicable Usage Percentage for the prior fiscal month:

<table>
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<th>Level</th>
<th>Usage Percentage</th>
<th>Applicable Margin for Eurodollar Loans</th>
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<td>I</td>
<td>≥ 70%</td>
<td>2.00%</td>
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<td>II</td>
<td>&lt; 70% ≥ 30%</td>
<td>2.25%</td>
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<td>2.50%</td>
<td>1.50%</td>
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Notwithstanding the foregoing, (a) until the delivery of the first Compliance Certificate required to be delivered pursuant to Section 6.2(b) in connection with the delivery by the Borrower of the consolidated financial statements required to be delivered to the Administrative Agent pursuant to Sections 6.1(c), the Applicable Margin shall be the rates corresponding to Level III in the foregoing table, (b) if the Borrower fails to deliver the financial statements required by Section 6.1 and the related Compliance Certificate required by Section 6.2(b), by the respective date required thereunder after the end of any related fiscal month of the Borrower, the Applicable Margin shall be the rates corresponding to Level III in the foregoing table until such financial statements and Compliance Certificate are delivered, and (c) no reduction to the Applicable Margin shall become effective at any time when an Event of Default has occurred and is continuing.

If, as a result of any restatement of or other adjustment to the financial statements of the Loan Parties or for any other reason, the Administrative Agent determines that (x) the Usage Percentage as calculated by the Borrower as of any applicable date was inaccurate and (y) a proper calculation of the Usage Percentage would have resulted in different pricing for any period, then: (i) if the proper calculation of the Usage Percentage would have resulted in higher pricing for such period, the Borrower shall automatically and retroactively be obligated to pay to the Administrative Agent, for the benefit of the applicable Lenders, promptly on demand by the Administrative Agent, an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period; and (ii) if the proper calculation of the Usage Percentage would have resulted in lower pricing for such period, neither the Administrative Agent nor any Lender shall have any obligation to repay any interest or fees to the Borrower. If the Administrative Agent makes a determination that the proper calculation of the Usage Percentage would have resulted in higher pricing for any period, then the Administrative Agent will endeavor to provide the Borrower with written notice promptly following such determination, provided that failure to provide such written notice shall not relieve the Borrower of any obligation to pay any amounts due hereunder.

“Application”: an application, in such form as the Issuing Lender may specify from time to time, requesting the Issuing Lender to issue a Letter of Credit.
“Application Event”: the occurrence of (a) a failure by Borrower to repay all of the Obligations in full on the Revolving Termination Date, or (b) an Event of Default and the election by Administrative Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to Section 8.3.

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

“Arrangers”: as defined in the preamble hereto.

“Assignment and Assumption”: an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.6), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form (including electronic documentation generated by an electronic platform) approved by the Administrative Agent.

“Available Revolving Commitment”: at any time, an amount equal to (a) the lesser of (i) the Total Revolving Commitments in effect at such time and (ii) the Borrowing Base in effect at such time, minus (b) the sum of (i) the aggregate undrawn amount of all outstanding Letters of Credit at such time, (ii) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time, and (iii) the aggregate principal balance of any Loans outstanding at such time; provided that for purposes of calculating any Lender’s Revolving Extensions of Credit for the purpose of determining such Lender’s available Revolving Commitment pursuant to Section 2.9(b), the aggregate principal amount of Swingline Loans then outstanding shall be deemed to be zero.

“Available Revolving Increase Amount”: as of any date of determination, an amount equal to the result of (a) $70,000,000 minus (b) the aggregate principal amount of Increases to the Revolving Commitments previously made pursuant to Section 2.12.

“Bank Services”: any one or more of the following financial products or accommodations extended to any Group Member or any of its Subsidiaries by any Bank Services Provider: (a) credit cards (including commercial cards (including so-called “purchase cards”, “procurement cards” or “p-cards”)), (b) credit card processing services, (c) debit cards, (d) stored value cards, (e) cash management services (such as treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including ACH) and other cash management arrangements, in each case as any such products or services may be identified in any Bank Services Provider’s various agreements related thereto (each, a “Bank Services Agreement”).

“Bank Services Agreement”: as defined in the definition of “Bank Services.”

“Bank Services Provider”: the Administrative Agent, any Lender, or any Affiliate of the foregoing who provides Bank Services to any Group Member, including any Person that was a Lender at the time the Bank Services were provided to any Group Member.

“Bankruptcy Code”: Title 11 of the United States Code entitled “Bankruptcy.”

“Benefitted Lender”: as defined in Section 10.7(a).

“Board”: the Board of Governors of the Federal Reserve System of the United States (or any successor).

“Borrower”: as defined in the preamble hereto.
"Borrowing Base": as of any date of determination by the Collateral Agents, from time to time, an amount equal to the sum as of such date of (a) up to (i) 85% of the book value of (A) Eligible Accounts as of such date which are covered by credit insurance satisfactory to the Collateral Agents and the Lenders and (B) other Eligible Accounts which are not covered by credit insurance but which are approved by the Collateral Agents and the Lenders in their sole discretion on a case-by-case basis, and (ii) 80% of the book value of all other Eligible Accounts which are not included in clause (i), above, less the amount, if any, of the Dilution Reserve plus (b) up to the lesser of (i) the sum of (A) the lesser of (1) 50% of the value of Eligible Inventory as of such date valued at the lower of cost (determined on a first in, first out basis) or market and (2) the product of 85% multiplied by the NOLV Percentage identified in the most recent Inventory appraisal ordered and obtained by the Collateral Agents multiplied by the value (calculated at the lower of cost or market) of Eligible Inventory as of such date (such determination may be made as to different categories of Inventory based upon the NOLV Percentage applicable to such categories) plus (B) the least of (1) 50% of the value of Eligible In-Transit Inventory as of such date valued at the lower of cost (determined on a first in, first out basis) or market, (2) the product of 85% multiplied by the NOLV Percentage identified in the most recent Inventory appraisal ordered and obtained by the Collateral Agents multiplied by the value (calculated at the lower of cost or market) of Eligible In-Transit Inventory as of such date (such determination may be made as to different categories of Inventory based upon the NOLV Percentage applicable to such categories), and (3) $5,000,000, and (ii) the lesser of (A) 65% of the amounts included in the Borrowing Base pursuant to clause (a) above and (B) $75,000,000, less (c) in each case, the amount of any Reserves established by the Collateral Agents as of such date; provided that Eligible In-Transit Inventory shall not be included in the Borrowing Base until such time as the Collateral Agents and the Lenders shall have received (1) satisfactory results of an inventory appraisal of Borrower’s in-transit Inventory conducted by a third party firm acceptable to the Collateral Agents, (2) satisfactory results of an examination and audit of Borrower’s in-transit Inventory, and (3) satisfactory reporting from Borrower as to in-transit Inventory in form and substance satisfactory to the Collateral Agents; and provided, further, that the calculation of the Borrowing Base shall be subject to the approval of the Collateral Agents in all respects.

"Borrowing Base Certificate": a Transaction Report to be executed and delivered from time to time by the Borrower pursuant to the terms hereof.

"Borrowing Date": any Business Day specified by the Borrower in a Notice of Borrowing as a date on which the Borrower requests the relevant Lenders to make Loans hereunder.

"BrightPoint A/P": as of any date of determination, the total current and accrued accounts payable (whether invoiced or not invoiced) by the Borrower to the Borrower’s principal 3PL provider.

"BrightPoint Reserve": a Reserve against the Borrowing Base in an amount equal to the BrightPoint A/P.

"Business": as defined in Section 4.17(b).

"Business Day": a day other than a Saturday, Sunday, or other day on which commercial banks in the State of California or the State of New York are authorized or required by law to close; provided that with respect to notices and determinations in connection with, and payments of principal and interest on, Eurodollar Loans, such day is also a day for trading by and between banks in Dollar deposits in the interbank eurodollar market.

"Capital Lease Obligations": as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.
“Capital Stock”: any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

“Cash Collateralize”: to pledge and deposit with or deliver to (a) with respect to Obligations in respect of Letters of Credit, the Administrative Agent, for the benefit of the Issuing Lender and one or more of the Lenders, as applicable, as collateral for L/C Exposure or obligations of the Lenders to fund participations in respect thereof, cash or Deposit Account balances having an aggregate value of at least 105% of the L/C Exposure or, if the Administrative Agent and the Issuing Lender shall agree in their sole discretion, a standby letter of credit, in form and substance reasonably satisfactory to the Administrative Agent and the Issuing Lender, from a commercial bank acceptable to the Administrative Agent and the Issuing Lender (in their sole discretion) in an amount equal to 105% of the then existing LC Exposure (it being understood that the LC Fee and all fronting fees set forth in this Agreement will continue to accrue while the Letters of Credit are outstanding and that any such fees that accrue must be an amount that can be drawn under any such standby letter of credit), in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the Issuing Lender; (b) with respect to Obligations arising under any Bank Services Agreement in connection with Bank Services, the Administrative Agent, for its own or any applicable Bank Services Provider’s benefit, as provider of such Bank Services, cash or Deposit Account balances having an aggregate value of at least 105% of the aggregate amount of the Obligations of the Group Members arising under all such Bank Services Agreements evidencing such Bank Services; or (c) with respect to Obligations in respect of any Specified Swap Agreements, the applicable Qualified Counterparty, as Collateral for such Obligations, cash or Deposit Account balances or, if such Qualified Counterparty shall agree in its sole discretion, other credit support, in each case in amounts and pursuant to documentation in form and substance satisfactory to such Qualified Counterparty. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents”: (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of six months or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than $250,000,000; (c) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody’s, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within six months from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than 30 days, with respect to securities issued or fully guaranteed by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody’s; (f) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition; (g) money market mutual or similar funds that invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition; or (h) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by S&P and Aaa by Moody’s and (iii) have portfolio assets of at least $5,000,000,000.
“Cash Flow Agent” means Morgan Stanley Senior Funding, Inc., in its capacity as administrative agent for the Cash Flow Lenders under the Cash Flow Credit Agreement, together with its successors and assigns in such capacity.

“Cash Flow Credit Agreement” shall mean the Revolving Credit and Guaranty Agreement, dated as of August 13, 2014, by and among the Borrower, the Cash Flow Lenders and the Cash Flow Agent, as such agreement may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms hereof and the Intercreditor Agreement.

“Cash Flow Lenders” shall mean the financial institutions and other entities party from time to time to the Cash Flow Credit Agreement, together with their respective successors, assigns and transferees.

“Casualty Event”: any damage to or any destruction of, or any condemnation or other taking by any Governmental Authority of any property of the Loan Parties.

“Certificated Securities”: as defined in Section 4.19(a).

“Change of Control”: (a) At any time, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), excluding any one or more of the Permitted Investors, shall become, or obtain rights (whether by means or warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of 50% or more of the ordinary voting power for the election of directors of the Borrower (determined on a fully diluted basis); (b) during any period of 24 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (disregarding individuals who cease to serve due to death or disability and who are not replaced) (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body, (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii), and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors), or (iv) whose election or nomination to that board or equivalent governing body was required by a designation by one or more stockholders having the contractual right to designate one or more members of the board or equivalent governing body pursuant to a voting agreement or shareholders’ agreement or similar agreement to which Permitted Investors holding a majority of the shares of the Borrower’s Capital Stock held by all Permitted Investors are party; (c) at any time, the Borrower shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding Capital Stock of each Guarantor (disregarding minimal numbers of shares held to comply with applicable laws requiring a legal entity to have more than one Equity Interest holder for the entity to be reorganized) free and clear of all Liens (except Liens created by the Security Documents and Liens permitted by Section 7.3(c) which are non-consensual permitted Liens); or (d) the occurrence of a “Change of Control” under the Cash Flow Credit Agreement.

“Closing Date”: the date on which all of the conditions precedent set forth in Section 5.1 are satisfied or waived by the Collateral Agents and, as applicable, the Lenders or the Required Lenders.

“Collateral Agents”: as defined in the preamble hereto.
“Code”: the Internal Revenue Code of 1986, as amended from time to time.

“Collateral”: all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document. For the avoidance of doubt, no Excluded Asset (as such term is defined in the Guarantee and Collateral Agreement) shall constitute “Collateral.”

“Collateral Information Certificate”: the Collateral Information Certificate to be executed and delivered by the Loan Parties pursuant to Section 5.1, substantially in the form of Exhibit J.

“Collateral-Related Expenses”: all costs and expenses of any of the Collateral Agents paid or incurred in connection with any sale, collection or other realization on the Collateral, including reasonable compensation to the Administrative Agent and the Collateral Agents and their respective agents and counsel, and reimbursement for all other costs, expenses and liabilities and advances made or incurred by any of the Collateral Agents in connection therewith (including as described in Section 6.6 of the Guarantee and Collateral Agreement), and all amounts for which any Agent is entitled to indemnification under the Security Documents and all advances made by the Administrative Agent under the Security Documents for the account of any Loan Party.

“Commitment Fee”: as defined in Section 2.9(b).

“Commitment Fee Rate”: shall mean the rate per annum set forth under the relevant column heading under the definition of “Applicable Margin”.

“Communications”: is defined in Section 10.2(d)(ii).

“Compliance Certificate”: a certificate duly executed by a Responsible Officer of the Borrower substantially in the form of Exhibit B.

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

“Consolidated Capital Expenditures”: for any period, with respect to the Borrower and its consolidated Subsidiaries, the aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability and including that portion of Capital Lease Obligations which is capitalized on the consolidated balance sheet of the Borrower) by such Group Members during such period for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that, in conformity with GAAP, are included in “additions to property, plant or equipment” or comparable items reflected in the consolidated statement of cash flows of the Borrower.

“Consolidated EBITDA”: with respect to the Borrower and its consolidated Subsidiaries for any period, (a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, plus (ii) to the extent deducted in the calculation of Consolidated Net Income, the sum of (A) Consolidated Interest Expense, plus (B) provisions for taxes based on income, plus (C) total depreciation expense, plus (D) total amortization expense, plus (E) reasonable costs, fees and expenses in connection with an initial public offering of the Capital Stock of the Borrower, plus (F) non-cash stock compensation expenses, plus (G) non-cash exchange, translation or performance losses relating to any foreign currency hedging transactions or currency fluctuations, plus (H) costs, fees and expenses (1) in connection with the execution and delivery of this Agreement and the other Loan Documents or (2) paid by any Group Member after the Closing Date in connection with its obligations under the Loan Documents which are incurred not later than six (6) months after the Closing Date, plus (I) one-time costs, fees, and expenses in connection with Permitted Acquisitions.
or other transactions that if closed, would have constituted a Permitted Acquisition, plus (J) non-cash purchase accounting adjustments (including, but not limited to deferred revenue write-down) and any adjustments as required or permitted by the application of FASB 141 (requiring the use of purchase method of accounting for acquisitions and consolidations), FASB 142 (relating to changes in accounting for the amortization of good will and certain other intangibles) and FASB 144 (relating to the write downs of long-lived assets), in each case, in connection with Permitted Acquisitions, plus (K) non-cash charges for goodwill and other intangible write-offs and write-downs in connection with Permitted Acquisitions or otherwise, plus (L) other non-cash or non-recurring items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) approved by the Administrative Agent and the Required Lenders in writing as an ‘add back’ to Consolidated EBITDA, plus (M) charges and expenses related to the recall of the “FitBit Force,” and other cash and non-cash items reducing Consolidated Net Income associated therewith (including costs and expenses associated with related litigation, claims and administrative proceedings) in an aggregate amount not to exceed $84,600,000 for the fiscal quarter ended December 31, 2013 and $27,900,000 for the fiscal quarter ended March 31, 2014, minus (b) the sum, without duplication of the amounts for such period of (i) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period), plus (ii) interest income; provided that Consolidated EBITDA for any period shall be determined on a Pro Forma Basis.

“Consolidated Fixed Charge Coverage Ratio”: with respect to the Borrower and its consolidated Subsidiaries for any period, the ratio of (a) the result of (i) Consolidated EBITDA for such period minus (ii) the sum of (x) the amount of taxes based on income actually paid in cash or required to be paid (net of any cash refunds received, but only to extent such adjustment would not result in a negative number) during such period, (y) cash dividends and distributions paid to any Person that is not a Loan Party during such period and (z) Consolidated Capital Expenditures (other than Capital Expenditures to the extent financed with the proceeds of Indebtedness (other than proceeds of Loans)) to (b) Consolidated Fixed Charges for such period.

“Consolidated Fixed Charges”: with respect to the Borrower and its consolidated Subsidiaries for any period, the sum (without duplication) of (a) Consolidated Interest Expense accrued for such period (other than interest paid-in-kind, amortization of financing fees, and other non-cash Consolidated Interest Expense), plus (b) payments made or required to be paid during such period on account of principal of Indebtedness of the Borrower and its consolidated Subsidiaries (excluding Loans under the Revolving Commitments and loans under the Cash Flow Credit Agreement to the extent the Borrower has the right to continue, reborrow or convert such Loans pursuant to Section 2.13 or the right to continue, reborrow or convert such loans pursuant to the Cash Flow Credit Agreement).

“Consolidated Interest Expense”: for any period, total interest expense (including that portion of any Capital Lease Obligations that is treated as interest in accordance with GAAP) of the Borrower and its consolidated Subsidiaries for such period with respect to all outstanding Indebtedness of such Persons (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

“Consolidated Leverage Ratio”: as at the last day of any period, the ratio of (a) Consolidated Total Indebtedness on such day to (b) Consolidated EBITDA for such period.

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

“Consolidated Total Assets”: as of any date of determination, the aggregate principal amount of all assets of the Borrower and its consolidated Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP.

“Consolidated Total Indebtedness”: as of any date of determination, the aggregate principal amount of all Indebtedness of the Borrower and its consolidated Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP, but excluding any liabilities referred to in clauses (f) and (g) of the definition of “Indebtedness.”

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

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

“Control Agreement”: any account control agreement entered into among the depository institution at which a Loan Party maintains a Deposit Account or the securities intermediary at which a Loan Party maintains a Securities Account, such Loan Party, and the Administrative Agent pursuant to which the Administrative Agent obtains control (within the meaning of the UCC or any other applicable law) over such Deposit Account or Securities Account and which agreement is otherwise in form and substance reasonably satisfactory to Administrative Agent.

“Controlled Account”: each Deposit Account and Securities Account that is subject to a Control Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Issuing Lender.

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

“Default”: any of the events specified in Section 8.1, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Default Rate”: as defined in Section 2.15(c).

“Defaulting Lender”: subject to Section 2.24(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in
Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s reasonable determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.24(b) ) upon delivery of written notice of such determination to the Borrower, the Issuing Lender, the Swingline Lender and each Lender.

“Deferred Payment Obligations ”: as defined in Section 7.2.

“Deferred Revenue Liability “: as of any date of determination, the outstanding amount of deferred revenue liability accrued by Borrower in accordance with GAAP with respect to Accounts associated with Inventory of Borrower that has been shipped FOB destination.

“Deposit Account “: any “deposit account” as defined in the UCC with such additions to such term as may hereafter be made.

“Deposit Account Control Agreement “: any Control Agreement entered into by the Administrative Agent, a Loan Party and a financial institution holding a Deposit Account of such Loan Party pursuant to which the Administrative Agent is granted “control” (for purposes of the UCC) over such Deposit Account.

“Determination Date “: as defined in the definition of “Pro Forma Basis”.

“Dilution “: as of any date of determination, a percentage, based upon the experience of the immediately prior six months or such other applicable period to be determined by the Collateral Agents in their sole discretion, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Borrower’s Accounts during such period, by (b) Borrower’s billings with respect to Accounts during such period. In the event that the Collateral Agents elect to measure Dilution over a measurement period other than the prior six months, the Administrative Agent shall endeavor to notify Borrower at or before the time any such materially different period is measured for purposes of determining Dilution, but a non-willful failure of the Administrative Agent to so notify Borrower shall not be a breach of this Agreement and shall not cause such determination of Dilution to be ineffective. It is understood and agreed that, for purposes of the Borrowing Base for the Closing Date, Dilution was calculated for a 12-month period.
“Dilution Reserve”: as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by 1 percentage point for each percentage point by which Dilution is in excess of 5%.

“Discharge of Obligations”: subject to Section 10.8, means (a) the satisfaction of the Obligations (including all such Obligations relating to Bank Services and/or Specified Swap Agreements) by the payment in full, in cash (or, with respect to LC Exposure and Bank Services, as applicable, Cash Collateralization in accordance with the terms hereof) of the principal of and interest on or other liabilities relating to each Loan and any previously provided Bank Services, all fees and all other expenses or amounts payable under any Loan Document (other than inchoate indemnification obligations and any other obligations which pursuant to the terms of any Loan Document specifically survive repayment of the Loans for which no claim has been made), and other Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations)) under any Specified Swap Agreements provided by a Secured Party under or in respect of Specified Swap Agreements and Bank Services, to the extent (i) no default or termination event shall have occurred and be continuing thereunder, (ii) any such Obligations in respect of Specified Swap Agreements have, if required by any applicable Qualified Counterparties, been Cash Collateralized, (b) no Letter of Credit shall be outstanding (or, as applicable, each outstanding and undrawn Letter of Credit has been Cash Collateralized in accordance with the terms hereof), (c) no Obligations in respect of any Bank Services are outstanding (or, as applicable, all such outstanding Obligations in respect of Bank Services have been Cash Collateralized in accordance with the terms hereof), and (d) the aggregate Revolving Commitments of the Lenders are terminated.

“Disposition”: with respect to any property (including, without limitation, Capital Stock of the Borrower or any of its Subsidiaries), any sale, lease, Sale Leaseback Transaction, assignment, conveyance, transfer, encumbrance or other disposition thereof and any issuance of Capital Stock of the Borrower or any of its Subsidiaries. The terms “Dispose” and “Disposed of” shall have correlative meanings.

“Disqualified Stock”: any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the payment of any dividend in cash or any scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Stock, in each case, prior to the date that is 181 days after the Revolving Termination Date. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Borrower and its Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption or payment provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

“Dollars” and “$”: dollars in lawful currency of the United States.

“Domestic Subsidiary”: any Subsidiary of any Loan Party organized under the laws of any jurisdiction within the United States.

“Eligible Accounts”: all of the Accounts owned by the Borrower and reflected in the most recent Borrowing Base Certificate delivered by the Borrower to the Collateral Agents, except any such Account as to which any of the exclusionary criteria set forth below applies. The Collateral Agents shall have the right, at any time and from time to time after the Closing Date, to establish, modify or eliminate Reserves against
Eligible Accounts, or, acting in its commercially reasonable good faith business judgment, to adjust or supplement any of the criteria set forth below, to establish new criteria, and to adjust advance rates with respect to Eligible Accounts, to reflect changes in the collectability or realization values of such Accounts. The Collateral Agents shall have the right, at any time and from time to time after the Closing Date, to include in or exclude from Eligible Accounts (acting in their reasonable credit judgment) groups and types of Accounts, as well as Accounts on a case-by-case basis, which the Collateral Agents may, in their sole discretion, consider upon the Borrower’s written request. Eligible Accounts shall be calculated net of customer deposits, unapplied cash, taxes, discounts, credits, allowances, and rebates. Except as otherwise may be determined by the Collateral Agents pursuant to the immediately preceding sentence, Eligible Accounts shall not include any Account of the Borrower:

(a) that does not arise from the sale of goods or the performance of services by the Borrower in the ordinary course of its business;

(b) (i) upon which the Borrower’s right to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever (other than any such contingencies or conditions that have already been satisfied) or (ii) as to which the Borrower is not able to bring suit or otherwise enforce its remedies against the applicable Account Debtor through judicial process or (iii) if the Account represents a progress billing consisting of an invoice for goods sold or services rendered pursuant to a contract under which the applicable Account Debtor’s obligation to pay is subject to the Borrower’s completion of further performance under such contract or is subject to the equitable lien of a surety bond issuer;

(c) (i) with respect to which the Account Debtor is a creditor of Borrower or has a right of recoupment or setoff, to the extent of such claim, right of recoupment or setoff, (ii) to the extent that any defense, counterclaim, setoff or dispute is asserted as to such Account, or (iii) to the extent such Account relates to the sale of Inventory that is subject to (or reasonably expected to be subject to) a recall;

(d) that is not a true and correct statement of bona fide indebtedness incurred in the amount of the Account for merchandise sold (and shipped) to or services rendered and accepted by the applicable Account Debtor;

(e) with respect to which an invoice, consistent with the Borrower’s past business practices, has not been sent to the applicable Account Debtor; provided that the Borrower shall have provided the Administrative Agent with written notice of any material change in the form of invoice utilized by the Borrower during the course of its business;

(f) that (i) is not owned by the Borrower or (ii) is subject to any Lien of any other Person, other than (x) Liens in favor of the Administrative Agent (held for the ratable benefit of the Secured Parties) or (y) Liens permitted by Section 7.3 for so long as such Liens do not have priority over the Liens in favor of the Administrative Agent (held for the ratable benefit of the Secured Parties);

(g) that arises from a sale to any director, officer, other employee or Affiliate of any Loan Party, or to any entity that has any common officer or director with any Loan Party;

(h) that is the obligation of an Account Debtor that is the United States government or a political subdivision thereof, or any state, county or municipality or department, agency or instrumentality thereof unless the Collateral Agents, in their sole discretion, have agreed to the contrary in writing and the Borrower, if necessary or desirable in the reasonable determination of the Collateral Agents, has complied with respect to such obligation with the Federal Assignment of Claims Act of 1940, or any applicable state, county or municipal law restricting assignment thereof.
(i) that is the obligation of an Account Debtor located in a foreign country, other than (A) where such obligation is supported by a letter of credit, assigned and delivered to the Administrative Agent and reasonably satisfactory to the Collateral Agents as to form, amount and issuer, or (B) foreign accounts covered under the EULER Multi-Markets Business Credit Insurance Policy (the “Policy”) that are within 60 days past due but not greater than 120 days past the invoice date, provided that with respect to this clause (B), (x) such foreign accounts may be subject to additional eligibility criteria determined by the Collateral Agents in their sole discretion, and (y) availability for such foreign accounts will be calculated based on the individual insurance limits detailed in the Policy, up to the current Policy amount, less any claims already paid, any applicable coinsurance, and the remaining balance of any unpaid deductible; provided, however, the foregoing to the contrary notwithstanding, the aggregate book value of Accounts owed by Account Debtors located in a foreign country that is permitted to be included as Eligible Accounts in the Borrowing Base at any one time (after application of the applicable advance rate) will be limited to $25,000,000 in the aggregate;

(j) that is an obligation of an Account Debtor located in the United States that, unless otherwise agreed by the Collateral Agents in writing on a case by case basis in their sole discretion from time to time, (i) is not covered under the Policy, or (ii) if covered by the Policy, that is (y) in excess of any individual insurance limits detailed in the Policy or (z) in excess of the current Policy amount, less any claims already paid, any applicable coinsurance (other than certain coinsurance obligations approved by the Collateral Agents in writing from time to time on a case by case basis in their sole discretion), and the remaining balance of any unpaid deductible;

(k) to the extent any Group Member is liable to the applicable Account Debtor related to such Account for goods sold or services rendered or to be rendered to or by such Group Member, but only to the extent of the potential offset;

(l) that arises with respect to goods that are delivered on a bill-and-hold, cash-on-delivery basis or placed on consignment, guaranteed sale or other terms by reason of which the payment by the applicable Account Debtor is or may be conditional (but only to the extent that any such delivery condition then applies);

(m) that is in default, or any other Account if:

(i) such Account is not paid within ninety (90) days (or 120 days in the case of foreign Accounts not excluded as ineligible pursuant to clause (i) above) following its original invoice date (irrespective of whether the payment terms relating to such Account permit payment after the 90th day following such original invoice date); provided that, in their sole discretion, the Collateral Agents may consider, on a case-by-case basis, including as “Eligible Accounts” any Account billed in the fourth quarter of a calendar year which is not paid within one hundred twenty (120) days following its original invoice date;

(ii) the Account Debtor obligated upon such Account suspends business, makes a general assignment for the benefit of creditors or fails to pay its debts generally as they come due; or

(iii) a petition is filed by or against the Account Debtor obligated upon such Account under any Debtor Relief Law and such petition has not been removed, withdrawn or vacated;

(n) that is owed by an Account Debtor (or its Affiliates) where 50% or more of the aggregate Dollar amount of all Accounts owing by such Account Debtor (or its Affiliates) are ineligible under one or more of the other criteria set forth in this definition;

(o) as to which the Administrative Agent’s Lien is not a first priority perfected Lien;
(p) as to which any of the representations or warranties in the Loan Documents are untrue;

(q) to the extent such Account exceeds any credit limit established by the any of the Collateral Agents, in their reasonable credit judgment;

(r) to the extent that such Account, together with all other Accounts owing by such Account Debtor and its Affiliates as of any date of determination, exceeds (1) with respect to Target, Best Buy and Amazon, 35% of all Eligible Accounts, (2) with respect to Wynit Distributing LLC, 20% of all Eligible Accounts and (3) with respect to each other Account Debtor and its Affiliates, 10% of all Eligible Accounts; provided, that, in each case, the amount of Eligible Accounts that are excluded because they exceed any of the foregoing percentages shall be determined by the Collateral Agents based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limits;

(s) that is payable in any currency other than Dollars (unless converted into Dollars on terms reasonably satisfactory to the Collateral Agents);

(t) owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor’s satisfaction of the Borrower’s complete performance (but only to the extent of the amount withheld (sometimes called retainage billings) or that could be so withheld;

(u) subject to contractual arrangements between the Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements and where the Account Debtor has a right of setoff for damages suffered as a result of the Borrower’s failure to perform in accordance with the contract setting forth such requirements (sometimes called contracts accounts receivable, progress billings, milestone billings or fulfillment contracts);

(v) subject to trust provisions, subrogation rights of a bonding company or a statutory trust;

(w) with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity; or

(x) for which any Agent determines, based on its commercially reasonable good faith business judgment, collection to be doubtful.

Any Account which is at any time an Eligible Account, but which subsequently fails to meet any of the foregoing eligibility requirements, shall forthwith cease to be an Eligible Account until such time as such Account shall again meet all of the foregoing requirements.

“Eligible Assignee”: any Person that meets the requirements to be an assignee under Section 10.6(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.6(b)(iii)).

“Eligible In-Transit Inventory”: those items of Inventory that do not qualify as Eligible Inventory solely because they are not in a location set forth on Schedule E-1 or in transit among such locations and Borrower does not have actual and exclusive possession thereof, but as to which,

(a) the Inventory was the subject of a Qualified Import Letter of Credit,
(b) such Inventory currently is in transit (whether by vessel, air, or land) from a location outside of the continental United States to a location in the United States set forth on Schedule E-1,

(c) title to such Inventory has passed to Borrower,

(d) such Inventory is insured against types of loss, damage, hazards, and risks, and in amounts, satisfactory to the Collateral Agents in their commercially reasonable good faith business judgment,

(e) such Inventory either (1) is the subject of a negotiable bill of lading governed by the laws of a state within the United States (x) that is consigned to Administrative Agent or one of its agents (either directly or by means of endorsements), (y) that was issued by the carrier respecting the subject Inventory, and (z) that either is (I) in the possession of Administrative Agent or a customs broker (in each case in the continental United States), or (II) the subject of a telefacsimile copy that Administrative Agent has received from the Issuing Lender which issued the applicable Letter of Credit and as to which Administrative Agent also has received a confirmation from such Issuing Lender that such document is in-transit by air-courier to Administrative Agent or a customs broker (in each case, in the continental United States), or (2) is the subject of a negotiable cargo receipt governed by the laws of a state within the United States and is not the subject of a bill of lading (other than a negotiable bill of lading consigned to, and in the possession of, a consolidator or Administrative Agent, or their respective agents) and such negotiable cargo receipt (x) is consigned to Administrative Agent or one of its agents (either directly or by means of endorsements), (y) was issued by a consolidator respecting the subject Inventory, and (z) either is (I) in the possession of Administrative Agent or a customs broker (in each case in the continental United States), or (II) the subject of a telefacsimile copy that Administrative Agent has received from the Issuing Bank which issued the applicable Letter of Credit and as to which Administrative Agent also has received a confirmation from such Issuing Lender that such document is in-transit by air-courier to Administrative Agent or a customs broker (in each case, in the continental United States),

(f) Borrower has provided a certificate to Administrative Agent that certifies that, to the best knowledge of Borrower, such Inventory meets all of Borrower’s representations and warranties contained in the Loan Documents concerning Eligible In-Transit Inventory, that it knows of no reason why such Inventory would not be accepted by Borrower when it arrives in the continental United States and that the shipment as evidenced by the documents conforms to the related order documents, and

(g) the applicable Letter of Credit has been drawn upon in full and the Issuing Lender has honored such drawing.

Any Inventory which is at any time Eligible In-Transit Inventory, but which subsequently fails to meet any of the foregoing requirements, shall forthwith cease to be Eligible In-Transit Inventory until such time as such Inventory shall meet all of the foregoing requirements.

“Eligible Inventory”: Inventory of the Borrower subject to the Lien in favor of the Administrative Agent (held for the ratable benefit of the Secured Parties) created by the Security Documents, the value of which shall be determined by the Collateral Agents in their commercially reasonable good faith business judgment by taking into consideration, among other factors, the lowest of its cost (determined on a first in, first out basis), its book value determined in accordance with GAAP and its market value, except any such Inventory as to which any of the exclusionary criteria set forth below applies. The Collateral Agents shall have the right, at any time and from time to time after the Closing Date, to establish, modify or eliminate Reserves against Eligible Inventory, or acting in their commercially reasonable good faith business judgment, to adjust or supplement any of the criteria set forth below, to establish new criteria, and to adjust advance rates with respect to Eligible Inventory. Eligible Inventory shall not include any such Inventory of the Borrower that is:

(a) Inventory as to which Borrower does not have good, valid and marketable title;
(b) Inventory consisting of “perishable agricultural commodities” within the meaning of the Perishable Agricultural Commodities Act of 1930, or on which a Lien has arisen or may arise in favor of agricultural producers under any comparable Laws;

(c) Inventory which is not owned by the Borrower free and clear of all Liens and rights of others (other than (x) Liens granted in favor of the Administrative Agent (held for the ratable benefit of the Secured Parties) or (y) Liens permitted by Section 7.3 for so long as such Liens do not have priority over the Liens in favor of the Administrative Agent (held for the ratable benefit of the Secured Parties), including Inventory located on leaseholds as to which the lessor has not entered into a consent and agreement providing the Administrative Agent with the right to receive notices of default, the right to repossess such Inventory at any time and such other rights as may be reasonably requested by the Administrative Agent;

(d) Inventory that is obsolete, spoiled, damaged, unusable or otherwise unavailable for sale;

(e) Inventory consisting of promotional, marketing, packaging or shipping materials and supplies;

(f) Inventory that fails to meet all Requirements of Law imposed by any Governmental Authority having regulatory authority over such Inventory or its use or sale;

(g) Inventory that is subject to any licensing, patent, royalty, trademark, trade name or copyright or other proprietary rights agreement with any third party (i) with respect to which the Borrower has received notice of a dispute in respect of any such agreement or arrangement or (ii) as to which any Agent is not satisfied that such Inventory can be freely sold by Administrative Agent on and after the occurrence of an Event of a Default despite such agreement, arrangement, or rights;

(h) Inventory that is located at any site if the aggregate book value of Inventory at any such location is less than $100,000;

(i) Inventory located outside the United States or Canada;

(j) Inventory that is not located at a location (or in transit between two or more such locations) set forth on Schedule E-1 to this Agreement;

(k) Inventory that is not in the possession of or under the sole control of the Borrower unless held by a third-party bailee or the Borrower’s principal 3PL provider which has, in each case, executed and delivered a bailee agreement in favor of, and in form and substance reasonably satisfactory to, the Collateral Agents;

(l) Inventory consisting of accessories, raw materials, supplies or work in progress (other than Kitted Inventory);

(m) Inventory with respect to which the representations and warranties set forth in Section 4 of the Guarantee and Collateral Agreement applicable to Inventory are not correct;

(n) Inventory in respect of which the Guarantee and Collateral Agreement, after giving effect to the related filings of financing statements that have then been made, if any, does not or has ceased to create a valid and perfected first priority Lien or security interest in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, securing the Obligations;
(o) Inventory which is comingled with property of a person other than the Borrower;

(p) Inventory that is unlikely to be sold by the Borrower in the ordinary course of business as evidenced by the most recent Inventory Report, if any, delivered to the Collateral Agents pursuant to Section 6.3(g);

(q) Inventory which any Agent considers, based on its commercially reasonable good faith business judgment, unacceptable due to age, type, category or quantity or is otherwise ineligible;

(r) Inventory that is slow moving, as determined by the Collateral Agents in their commercially reasonable business judgment based on information available through reporting, appraisals, field exams, industry trends, or otherwise (including, without limitation, that in the event that aging or other reporting sufficient to enable a determination of age of Borrower’s Inventory is available, Inventory that is aged in excess of 100 days will be ineligible);

(s) Inventory that is subject to a bill of lading or other document of title;

(t) Inventory that consists of goods that are restrictive or custom items, goods returned or rejected by Borrower’s customers, bill and hold goods, defective goods, goods that are the subject of a recall, “seconds,” or Inventory acquired on consignment, or

(u) Inventory that is associated with Accounts with respect to which Borrower has accrued Deferred Revenue Liability, other than Inventory with an aggregate value of up to $7,500,000 in the aggregate at any time outstanding that is associated with accrued Deferred Revenue Liability.

Any Inventory which is at any time Eligible Inventory, but which subsequently fails to meet any of the foregoing requirements, shall forthwith cease to be Eligible Inventory until such time as such Inventory shall meet all of the foregoing requirements. For the avoidance of doubt, under no circumstance will any Inventory be permitted to constitute both Eligible Inventory and Eligible In-Transit Inventory.

“Employment Wage/Benefit Payment Deposit Account”: any deposit accounts exclusively used for payroll, payroll taxes or other employee wage and benefit payments to or for the benefit of the Borrower’s employees.


“Environmental Laws”: any and all foreign, Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health or the environment, as now or may at any time hereafter be in effect.

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

“Equipment”: all “equipment” as defined in the UCC with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

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

“ERISA”: the Employee Retirement Income Security Act of 1974, including (unless the context otherwise requires) any rules or regulations promulgated thereunder.

“ERISA Affiliate”: each business or entity which is, or within the last six years was, a member of a “controlled group of corporations,” under “common control” or an “affiliated service group” with any Loan Party within the meaning of Section 414(b), (c) or (m) of the Code, required to be aggregated with any Loan Party under Section 414(o) of the Code, or is, or within the last six years was, under “common control” with any Loan Party, within the meaning of Section 4001(a)(14) of ERISA.

“ERISA Event”: any of (a) a reportable event as defined in Section 4043 of ERISA with respect to a Pension Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event; (b) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Pension Plan where an event described in paragraph (9), (10), (11), (12) or (13) of section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following 30 days; (c) a withdrawal by any Loan Party or any ERISA Affiliate thereof from a Pension Plan or the termination of any Pension Plan resulting in liability under Sections 4063 or 4064 of ERISA; (d) the withdrawal of any Loan Party or, to the knowledge of any Loan Party, any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by any Loan Party or, to the knowledge of an Loan Party, any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (e) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) the imposition of liability on any Loan Party or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the failure by any Loan Party or any ERISA Affiliate thereof to make any required contribution to a Pension Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (h) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (i) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to...
administer, any Pension Plan or Multiemployer Plan; (j) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate thereof; (k) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Pension Plan; (l) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Loan Party or any Subsidiary thereof may be directly or indirectly liable; (m) the occurrence of an act or omission which could give rise to the imposition on any Loan Party or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (l) or 4071 of ERISA; (n) the assertion of a material claim (other than routine claims for benefits) against any Pension Plan or the assets thereof, or against any Loan Party or any Subsidiary thereof in connection with any such Pension Plan; (o) receipt from the IRS of notice of the failure of any Pension Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; or (p) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of any Loan Party or any ERISA Affiliate thereof, in either case pursuant to Title I or IV, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code.

“ERISA Funding Rules”: the rules regarding minimum required contributions (including any installment payment thereof) to Pension Plans, as set forth in Section 412 of the Code and Section 302 of ERISA, with respect to Plan years ending prior to the effective date of the Pension Protection Act of 2006, and thereafter, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Eurocurrency Reserve Requirements”: for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including basic, supplemental, marginal and emergency reserves) under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board) maintained by a member bank of the Federal Reserve System.

“Eurodollar Base Rate”: with respect to each day during each Interest Period pertaining to a Eurodollar Loan, the rate per annum determined by the Administrative Agent by reference to the ICE Benchmark Administration LIBOR Rate (or any successor thereto if the ICE Benchmark Administration is no longer making a LIBOR Rate available) (“LIBOR”) for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 A.M. (London, England time) two (2) Business Days prior to the beginning of such Interest Period (as set forth by Bloomberg Information Service or any successor thereto or any other commercially available service selected by the Administrative Agent which provides quotations of LIBOR. In the event that the Administrative Agent determines that LIBOR is not available, the “Eurodollar Base Rate” shall be determined by reference to the rate per annum equal to the offered quotation rate to first class banks in the London interbank market by SVB for deposits (for delivery on the first day of the relevant Interest Period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Loan of the Administrative Agent, in its capacity as a Lender, for which the Eurodollar Base Rate is then being determined with maturities comparable to such period as of approximately 11:00 A.M. (London, England time) two (2) Business Days prior to the beginning of such Interest Period.

“Eurodollar Loans”: Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

“Eurodollar Rate”: with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum determined for such day in accordance with the following formula:

\[
\text{Eurodollar Base Rate} - \text{Eurocurrency Reserve Requirements} \times 1.00
\]

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The Eurodollar Rate shall be adjusted automatically as of the effective date of any change in the Eurocurrency Reserve Requirements which affect Eurodollar Loans to be made as of, and ABR Loans to be converted into Eurodollar Loans, in any such case, at the beginning of the next applicable Interest Period.

“Eurodollar Tranche”: the collective reference to Eurodollar Loans under the Revolving Facility (other than the L/C Facility), the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

“Event of Default”: any of the events specified in Section 8.1; provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.


“Excluded Assets”: as defined in the Guarantee and Collateral Agreement.

“Excluded Foreign Subsidiary”: in respect of any Loan Party, any Subsidiary of such Loan Party, at any date of determination, (a) that is a “controlled foreign corporation” as defined in Section 957 of the Code, or (b) that is a Subsidiary of a “controlled foreign corporation” as defined in Section 957 of the Code.

“Excluded Swap Obligation” shall mean, with respect to any Guarantor, any guarantee of any Swap Obligations under a Swap Agreement if, and only to the extent that and for so long as, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation under a Swap Agreement (or any guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time the guarantee of such Guarantor or the grant of such security interest would otherwise have become effective with respect to such Swap Obligation under a Swap Agreement but for such Guarantor’s failure to constitute an “eligible contract participant” at such time.

“Excluded Taxes”: any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in any such case (i) to the extent imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) to the extent constituting Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Revolving Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Revolving Commitment (other than pursuant to an assignment request by the Borrower under Section 2.23) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.20, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient’s failure to comply with Section 2.20(f); and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Existing Credit Agreement”: as defined in the preamble hereto.
“Existing Lenders”: SVB and the other “Lenders” under and as defined in the Existing Credit Agreement.

“Existing Letters of Credit”: the letters of credit described on Schedule 1.1B.

“Facility”: each of (a) the L/C Facility (which is a sub-facility of the Revolving Facility), and (b) the Revolving Facility.

“FASB ASC”: the Accounting Standards certification of the Financial Accounting Standards Board.

“FATCA”: (a) Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the United States and any other jurisdiction with the purpose (in either case) of facilitating the implementation of clause (a) above, or (c) any agreement pursuant to the implementation of clauses (a) or (b) above with the United States Internal Revenue Service, the United States government or any governmental or taxation authority in the United States.

“Federal Funds Effective Rate”: for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by SVB from three federal funds brokers of recognized standing selected by it.

“Fee Letter”: the letter agreement dated as of July 14, 2014, between the Borrower and the Administrative Agent.


“Flow of Funds Agreement”: the spreadsheet or other similar statement prepared and certified by the Borrower, regarding the disbursement of Revolving Loan proceeds on the Closing Date, the funding and the payment of the fees and expenses of the Agents and the Lenders (including their respective counsel), and such other matters as may be agreed to by the Borrower, the Administrative Agent, the Agents, and the Lenders.

“Foreign Currency”: lawful money of a country other than the United States.

“Foreign Lender”: (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

“Foreign Subsidiary”: in respect of any Loan Party, any Subsidiary of such Loan Party that is not a Domestic Subsidiary of such Loan Party.

“Fronting Exposure”: at any time there is a Defaulting Lender, as applicable, (a) with respect to the Issuing Lender, such Defaulting Lender’s L/C Percentage of the outstanding L/C Exposure other than L/C Exposure as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender’s Revolving Percentage of outstanding Swingline Loans made by the Swingline Lender other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.
“Fund”: any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP”: generally accepted accounting principles in the United States as in effect from time to time, except that for purposes of Section 7.1, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements referred to in Section 4.1(b). In the event that any “Accounting Change” (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then each party to this Agreement agrees to enter into negotiations to amend such provisions of this Agreement so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the Borrower’s financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. “Accounting Changes” refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

“Governmental Approval”: any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“Governmental Authority”: the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Group Members”: the collective reference to the Borrower and its Subsidiaries.

“Guarantee and Collateral Agreement”: the Amended and Restated Guarantee and Collateral Agreement to be executed and delivered by the Borrower and each Guarantor, substantially in the form of Exhibit A.

“Guarantee Obligation”: as to any Person (the “guaranteeing person”), any obligation, including a reimbursement, counterindemnity or similar obligation, of the guaranteeing person that guarantees or in effect guarantees, or which is given to induce the creation of a separate obligation by another Person (including any bank under any letter of credit) that guarantees or in effect guarantees, any Indebtedness, leases, dividends or other obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided that the term Guarantee Obligation shall not include endorsements of
instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

“Guarantors”: a collective reference to each Subsidiary of the Borrower which has become a Guarantor pursuant to the Guarantee and Collateral Agreement.

“Increase”: as defined in Section 2.12.

“Increase Joinder”: an instrument, in form and substance reasonably satisfactory to the Administrative Agent, by which a Lender becomes a party to this Agreement pursuant to Section 2.12.

“Incurred”: as defined in the definition of “Pro Forma Basis”.

“Indebtedness”: of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations and all Synthetic Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Disqualified Stock in such Person or any Capital Stock in any other Person, or any warrant, right or option to acquire such Capital Stock, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, and (j) the net obligations of such Person in respect of Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

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

“Indemnitee”: is defined in Section 10.5(b).

“Insider Indebtedness”: any Indebtedness owing by any Loan Party to any Group Member or officer, director, shareholder or employee of any Group Member.
“Insider Subordinated Indebtedness”: any Insider Indebtedness which is also Subordinated Indebtedness.

“Insolvency Proceeding”: is (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of any Person’s creditors generally or any substantial portion of such Person’s creditors, in each case undertaken under U.S. Federal, state or foreign law, including any Debtor Relief Law.

“Intangible Assets”: assets that are considered to be intangible assets under GAAP, including customer lists, goodwill, computer software, copyrights, trademarks, patents, franchises, licenses, unamortized deferred charges, unamortized debt discount and capitalized research and development costs.

“Intellectual Property”: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Intellectual Property Security Agreement”: an intellectual property security agreement entered into between a Loan Party and the Administrative Agent pursuant to the terms of the Guarantee and Collateral Agreement in form and substance satisfactory to the Administrative Agent, together with each other intellectual property security agreement and supplement thereto delivered pursuant to Section 6.12, in each case as amended, restated, supplemented or otherwise modified from time to time.

“Intercreditor Agreement”: that certain Intercreditor Agreement, dated as of the Closing Date, by and between the Administrative Agent, the Cash Flow Agent and the Borrower, as amended, restated, modified, or supplemented from time to time with the approval of the Required Lenders.

“Interest Payment Date”: (a) as to any ABR Loan (including any Swingline Loan), the first Business Day of each calendar month to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurodollar Loan having an Interest Period of three (3) months or less, the last Business Day of such Interest Period, (c) as to any Eurodollar Loan having an Interest Period longer than three (3) months, each day that is three (3) months (or, if such date is not a Business Day, the Business Day next succeeding such date) after the first day of such Interest Period and the last Business Day of such Interest Period, and (d) as to any Loan (other than any Revolving Loan that is an ABR Loan and any Swingline Loan), the date of any repayment or prepayment made in respect thereof.

“Interest Period”: as to any Eurodollar Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one (1), two (2), three (3) or six (6) months thereafter, as selected by the Borrower in its Notice of Borrowing or Notice of Conversion/Continuation, as the case may be, with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one (1), two (2), or three (3) or six (6) months thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent in a Notice of Conversion/Continuation not later than 10:00 A.M., Pacific time, on the date that is three (3) Business Days prior to the last day of the then current Interest Period with respect thereto; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;
(ii) the Borrower may not select an Interest Period under a particular Facility that would extend beyond the Revolving Termination Date;

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) the Borrower shall select Interest Periods so as not to require a payment or prepayment of any Eurodollar Loan during an Interest Period for such Loan.

“Interest Rate Agreement”: with respect to any Person, any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (a) for the purpose of hedging the interest rate exposure associated with such Person’s operations, (b) approved by Administrative Agent, and (c) not for speculative purposes.

“Inventory”: all “inventory,” as such term is defined in the Code, now owned or hereafter acquired by any Loan Party, wherever located, and in any event including inventory, merchandise, goods and other personal property that are held by or on behalf of any Loan Party for sale or lease or are furnished or are to be furnished under a contract of service, or that constitutes raw materials, work in process, finished goods, returned goods, or materials or supplies of any kind used or consumed or to be used or consumed in such Loan Party’s business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software.

“Inventory Report”: an Inventory report together with associated supporting details, which report is in form and substance satisfactory to the Borrower and the Collateral Agents, such determination by the Collateral Agents to be made in the exercise of their reasonable (from the perspective of a secured asset-based lender) business judgment, and which report shall, among other things, identify inventory on hand, historical sales data, and Inventory of the Borrower that is unlikely to be sold by the Borrower in the ordinary course of business, as evidenced by recent sales activity reports in form and substance satisfactory to the Collateral Agents.

“Inventory Reporting Reserve”: as defined in Section 6.3(g).

“Investments”: as defined in Section 7.7.

“IRS”: the Internal Revenue Service, or any successor thereto.

“ISP”: with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“Issuing Lender”: as the context may require, SVB or any Affiliate thereof, in its capacity as issuer of any Letter of Credit (including, without limitation, each Existing Letter of Credit), including any other Lender that may become a successor Issuing Lender pursuant to Section 3.12. The Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Lender or other financial institutions, in which case the term “Issuing Lender” shall include any such Affiliate or other financial institution with respect to Letters of Credit issued by such Affiliate or other financial institution.
“Issuing Lender Fees”: as defined in Section 3.3(a).

“Judgment Currency”: as defined in Section 10.19.

“Kitted Inventory”: Inventory consisting of work-in-process and accessories that are in the process of being kitted or waiting to be kitted by the Borrower or the Borrower’s principal 3PL provider; provided further that no more than 50% of Eligible Inventory in the aggregate at any time may be attributable to Kitted Inventory (and with any portion in excess thereof to be disregarded for purposes of calculating the Borrowing Base, after giving effect to all other adjustments).

“L/C Advance”: each L/C Lender’s funding of its participation in any L/C Disbursement in accordance with its L/C Percentage of the L/C Commitment.

“L/C Commitment”: as to any L/C Lender, the obligation of such L/C Lender, if any, to purchase an undivided interest in the Issuing Lender’s obligations and rights under and in respect of each Letter of Credit (including to make payments with respect to draws made under any Letter of Credit pursuant to Section 3.5(b)) in an aggregate principal amount not to exceed the amount set forth under the heading “L/C Commitment” opposite such L/C Lender’s name on Schedule 1.1A or in the Assignment and Assumption or the Increase Joinder pursuant to which such L/C Lender becomes a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The L/C Commitment is a sublimit of the Revolving Commitment and the aggregate amount of the L/C Commitments shall not exceed the amount of the Total L/C Commitments at any time.

“L/C Disbursements”: a payment or disbursement made by the Issuing Lender pursuant to a Letter of Credit.

“L/C Exposure”: at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, and (b) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time. The L/C Exposure of any L/C Lender at any time shall equal its L/C Percentage of the aggregate L/C Exposure at such time.

“L/C Facility”: the L/C Commitments and the extensions of credit made thereunder.

“L/C Fee Payment Date”: as defined in Section 3.3(a).

“L/C Lender”: a Lender with an L/C Commitment.

“L/C Percentage”: as to any L/C Lender at any time, the percentage of the Total L/C Commitments represented by such L/C Lender’s L/C Commitment, as such percentage may be adjusted as provided in Section 2.23.

“L/C-Related Documents”: collectively, each Letter of Credit (including any Existing Letter of Credit), all applications for any Letter of Credit (and applications for the amendment of any Letter of Credit) submitted by the Borrower to the Issuing Lender and any other document, agreement and instrument relating to any Letter of Credit, including any of the Issuing Lender’s standard form documents for letter of credit issuances.

“Lenders”: as defined in the preamble hereto; provided that unless the context otherwise requires, each reference herein to the Lenders shall be deemed to include the Issuing Lender and the Swingline Lender.
“Letter of Credit”: as defined in Section 3.1(a); provided that such term shall include each Existing Letter of Credit.

“Letter of Credit Availability Period”: the period from and including the Closing Date to but excluding the Letter of Credit Maturity Date.

“Letter of Credit Fees”: as defined in Section 3.3(a).

“Letter of Credit Fronting Fees”: as defined in Section 3.3(a).

“Letter of Credit Maturity Date”: the date occurring 15 days prior to the Revolving Termination Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“LIBOR”: as defined in the definition of “Eurodollar Base Rate.”

“Lien”: any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

“Liquidity”: at any time, the sum of (a) the aggregate amount of cash or Cash Equivalents held at such time by any Loan Party in Deposit Accounts or Securities Accounts subject to Control Agreements and maintained with a Bank Services Provider (excluding cash and Cash Equivalents securing letters of credit or subject to any Lien other than Liens permitted under Section 7.3(a) or (l)), plus (b) the Available Revolving Commitment at such time.

“Liquidity Report”: a report, in form and substance reasonably satisfactory to the Administrative Agent, delivered by the Borrower to the Administrative Agent which discloses, as of the date of such report, the amount of Liquidity as of such date.

“Loan”: any loan made or maintained by any Lender pursuant to this Agreement.

“Loan Documents”: this Agreement, the Security Documents, the Notes, the Intercreditor Agreement, the Fee Letter, the Flow of Funds Agreement, the Solvency Certificate, the Collateral Information Certificate, each L/C-Related Document, each Compliance Certificate, each Transaction Report, each Liquidity Report, each Notice of Borrowing, each Notice of Conversion/Continuation, each Bank Services Agreement, each Specified Swap Agreement, and any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 3.10, and any amendment, waiver, supplement or other modification to any of the foregoing.

“Loan Parties”: each Group Member that is a party to a Loan Document.

“Material Adverse Effect”: a material adverse effect on (a) the operations, business, assets, properties or financial condition of the Borrower and its Subsidiaries, taken as a whole, (b) the rights and remedies of the Administrative Agent, any Collateral Agent, or any Lender under any Loan Document, or of the ability of any Loan Party to perform its respective Obligations under any Loan Document to which it is a party, or (c) the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.
“Materials of Environmental Concern”: any substance, material or waste that is defined, regulated, governed or otherwise characterized under any Environmental Law as hazardous or toxic or as a pollutant or contaminant (or by words of similar meaning and regulatory effect), any petroleum or petroleum products, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, molds or fungus, and radioactivity; radiofrequency radiation at levels known to be hazardous to human health and safety.

“Minority Lender”: as defined in Section 10.1(b).

“Moody’s”: Moody’s Investors Service, Inc.

“Mortgaged Properties”: the real properties as to which, pursuant to Section 6.12(b) or otherwise, the Administrative Agent, for the benefit of the Secured Parties, shall be granted a Lien pursuant to the Mortgages.

“Mortgages”: each of the mortgages, deeds of trust, deeds to secure debt or such equivalent documents hereafter entered into and executed and delivered by one or more of the Loan Parties to the Administrative Agent, in each case, as such documents may be amended, amended and restated, supplemented or otherwise modified, renewed or replaced from time to time and in form and substance reasonably acceptable to the Administrative Agent.

“Multiemployer Plan”: a “multiemployer plan” (within the meaning of Section 3(37) of ERISA) to which any Loan Party or any ERISA Affiliate thereof makes, is making, or is obligated or has ever been obligated to make, contributions.

“NOLV Percentage”: as of any date of determination, the percentage of the book value of Borrower’s Inventory that is estimated to be recoverable in an orderly liquidation of such Inventory net of all associated costs and expenses of such liquidation, such percentage to be determined as to each category of Inventory and to be as specified in the most recent appraisal received by the Collateral Agents from an appraisal company selected by the Collateral Agents.

“Non-Consenting Lender”: any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Affected Lenders in accordance with the terms of Section 10.1 and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender”: at any time, each Lender that is not a Defaulting Lender at such time.

“Note”: a Revolving Loan Note or a Swingline Loan Note.

“Notice of Borrowing”: a notice substantially in the form of Exhibit K.

“Notice of Conversion/Continuation”: a notice substantially in the form of Exhibit L.

“Obligations”: the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) the Loans and all other obligations and liabilities (including any fees or expenses that accrue after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) of any Loan Party to any Agent, the Issuing Lender, any other Lender, any Bank Services Provider (in its capacity as a provider of Bank Services), or any Qualified Counterparty party to a Specified Swap Agreement, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which
may arise under, out of, or in connection with, this Agreement, any other Loan Document (including, for the avoidance of doubt, any Bank Services Agreement), the Letters of Credit, any Specified Swap Agreement or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, payment obligations, fees, indemnities, costs, expenses (including all reasonable and documented fees, charges and disbursements of counsel to any Agent, the Issuing Lender, any other Lender, any Bank Services Provider (to the extent that any applicable Bank Services Agreement requires the reimbursement by any applicable Group Member of any such expenses), and any Qualified Counterparty party to a Specified Swap Agreement that are required to be paid by any Loan Party pursuant any Loan Document) or otherwise, in each case, irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that Borrower is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents. For the avoidance of doubt, the Obligations shall not include any obligations arising under any warrants or other equity instruments issued by any Loan Party to any Lender; provided that Obligations of any Guarantor shall not include any Excluded Swap Obligations.

“Operating Documents”: for any Person as of any date, such Person’s constitutional documents, formation documents and/or certificate of incorporation (or equivalent thereof), as certified (if applicable) by such Person’s jurisdiction of formation as of a recent date, and, (a) if such Person is a corporation, its bylaws or memorandum and articles of association (or equivalent thereof) in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“OFAC”: The Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Original Loan Documents”: as defined in Section 10.21.

“Other Connection Taxes”: with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes”: all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.23).

“Over advance”: as defined in Section 2.8(a).

“Participant”: as defined in Section 10.6(d).

“Participant Register”: as defined in Section 10.6(d).

“Payoff Letter”: a letter, in form and substance satisfactory to the Administrative Agent, dated as of a date prior to the Closing Date and executed by each of the Subordinated Lenders and the Borrower to the effect that upon receipt by the Subordinated Lenders of the “payoff amount” (however designated) referenced therein, (a) the obligations of the Group Members under the Subordinated Credit Agreement shall be satisfied in full, (b) the Liens held by the Subordinated Lenders under the Subordinated Loan Agreement shall terminate without any further action, and (c) the Borrower and the Administrative Agent (and their respective counsel and such counsel’s agents) shall be entitled to file UCC-3 amendment statements, USPTO releases, USCRO releases and any other releases reasonably necessary to further evidence the termination of such Liens.

“PBGC”: the Pension Benefit Guaranty Corporation, or any successor thereto.

“Pension Plan”: an employee pension plan (as defined in Section 3(2) of ERISA) other than a Multiemployer Plan subject to the provisions of Title IV of ERISA or Sections 412 and 430 of the Code or Sections 302 and 303 of ERISA and in respect of which any Loan Party or any ERISA Affiliate thereof is (or if such plan were terminated would under Section 4069 of ERISA be deemed to be) a “contributing sponsor” as defined in Section 4001(a)(13) of ERISA.

“Permitted Acquisition”: as defined in Section 7.8(k).


“Permitted Refinancing Indebtedness”: Indebtedness of any Person (“Refinancing Indebtedness”) issued or incurred by such Person (including by means of the extension or renewal of existing Indebtedness) to refinance, refund, extend, renew or replace existing Indebtedness of such Person (“Refinanced Indebtedness”); provided that (a) the principal amount of such Refinancing Indebtedness is not greater than the principal amount of such Refinanced Indebtedness plus the amount of any premiums or penalties and accrued and unpaid interest paid thereon and reasonable fees and expenses, in each case associated with such Refinancing Indebtedness, (b) such Refinancing Indebtedness has a final maturity that is no sooner than, and a weighted average life to maturity (measured as of the refinancing, renewal, or extension) that is no shorter than, such Refinanced Indebtedness, (c) if such Refinanced Indebtedness or any Guarantee Obligation thereof or any security therefor are subordinated to the Obligations, such Refinancing Indebtedness and any Guarantee Obligations thereof and any security therefor remain so subordinated on terms no less favorable to the Lenders and the other Secured Parties, (d) the obligors in respect of such Refinanced Indebtedness immediately prior to such refinancing, refunding extension, renewal or replacement, (e) the covenants, events of default, and Guaranteed Obligations in respect of such Refinancing Indebtedness and any Guarantee Obligations which constitute all or a portion of such Refinancing Indebtedness, taken as a whole, are determined in good faith by a Responsible Officer of such Person to be no less favorable to such Person and the Lenders and the other Secured Parties in any material respect than the covenants and events of default or Guarantee Obligations, if any, applicable to such Refinanced Indebtedness, (f) the terms and conditions of any such modification, refinancing, refunding, renewal or extension, taken as a whole, are not materially less favorable to the Lenders than the terms and conditions of the Refinanced Indebtedness being modified, refinanced, refunded, renewed or extended (including that the interest rates are not increased and the amortization schedules are not increased/accelerated), and (g) such Refinancing Indebtedness shall not be on terms that would be prohibited by operation of Section 7.10 if the refinancing of such Refinanced Indebtedness were effected by way of an amendment to the terms of the Refinanced Indebtedness instead of by way of the issuance of Refinancing Indebtedness.

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“Person”: any natural Person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Platform”: is defined in Section 10.2(d)(i).

“Platform Contribution License Agreement”: the Platform Contribution License Agreement, effective as of August 1, 2014, by and between the Borrower and FitBit Holdings, a company organized under the laws of Ireland.

“Preferred Stock”: the preferred Capital Stock of any Loan Party.

“Prime Rate”: the rate of interest per annum from time to time published in the money rates section of the Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of the Wall Street Journal, becomes unavailable for any reason as determined by the Administrative Agent, the “Prime Rate” shall mean the rate of interest per annum announced by SVB as its prime rate in effect at its principal office in the State of California (such SVB announced Prime Rate not being intended to be the lowest rate of interest charged by SVB in connection with extensions of credit to debtors).

“Pro Forma Basis”: with respect to any calculation or determination for a Loan Party for any period, in making such calculation or determination on the specified date of determination (the “Determination Date”) means:

(a) pro forma effect will be given to any Indebtedness incurred (“Incurred”) by such Loan Party or any of its Subsidiaries (including by assumption of then outstanding Indebtedness) or by a Person becoming a Subsidiary after the beginning of the applicable period and on or before the Determination Date to the extent the Indebtedness is outstanding or is to be Incurred on the Determination Date, as if such Indebtedness had been Incurred on the first day of such period;

(b) pro forma calculations of interest on Indebtedness bearing a floating interest rate will be made as if the rate in effect on the Determination Date (taking into account any Swap Agreement applicable to the Indebtedness) had been the applicable rate for the entire reference period; and

(c) pro forma effect will be given to: (i) any acquisition or disposition of companies, divisions or lines of businesses by such Loan Party and its Subsidiaries, including any acquisition or disposition of a company, division or line of business since the beginning of the applicable period by a Person that became a Subsidiary after the beginning of the applicable period; and (ii) the discontinuation of any continued operations; in each case of clauses (i) and (ii), that have occurred since the beginning of the applicable period and before the Determination Date as if such events had occurred, and, in the case of any disposition, the proceeds thereof applied, on the first day of such period. To the extent that pro forma effect is to be given to an acquisition or disposition of a company, division or line of business, the pro forma calculation will be calculated in good faith by a responsible financial or accounting officer of such Loan Party in accordance with Regulation S-X under the Securities Act, based upon the most recent full fiscal quarter for which the relevant financial information is available.

“Projections”: as defined in Section 6.2(c).

“Properties”: as defined in Section 4.17(a).

“Protective Over advance”: as defined in Section 2.8(b).
“Qualified Counterparty”: with respect to any Specified Swap Agreement, any counterparty thereto that, at the time such Specified Swap Agreement was entered into or as of the Closing Date, was the Administrative Agent or a Lender or an Affiliate of the Administrative Agent or a Lender.

“Qualified Import Letter of Credit”: a Letter of Credit that (a) is issued to facilitate the purchase by Borrower of Eligible In-Transit Inventory, (b) is in form and substance acceptable to the Collateral Agents, and (c) is only drawable by the beneficiary thereof by the presentation of, among other documents, either (i) a negotiable bill of lading, governed by the laws of a state within the United States, that is consigned to the Administrative Agent or one of its agents (either directly or by means of endorsements) and that was issued by the carrier respecting the subject Eligible In-Transit Inventory, or (ii) a negotiable cargo receipt, governed by the laws of a state within the United States, that is consigned to the Administrative Agent or one of its agents (either directly or by means of endorsements) and that was issued by a consolidator respecting the subject Eligible In-Transit Inventory; provided, that, in the latter case, no bill of lading shall have been issued by the carrier (other than a bill of lading consigned to the consolidator or to the Administrative Agent or one of its agents).

“Qualified IPO”: the issuance by the Borrower of its common Qualified Stock in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act (whether alone or in connection with a secondary public offering) and such Equity Interests are listed on a nationally-recognized stock exchange in the United States.

“Qualified Stock”: any Capital Stock that is not Disqualified Stock.

“Qualifying Foreign Subsidiary Indebtedness”: any Indebtedness of any Foreign Subsidiary consisting of, in the form of, or substantially constituting, an asset-based loan facility or equivalent formula-based credit facility (a) under which the maximum aggregate amount of commitments or financial accommodations to be provided for all Foreign Subsidiaries would not exceed the greater of (i) $18,000,000 and (ii) ten percent (10%) of the Total Revolving Commitments in effect as of the date of the incurrence of such Indebtedness, and (b) the terms of which are generally not materially less favorable (after adjustment of such terms giving effect to local practice under the laws of the applicable jurisdiction) to the agent and lenders under such facility than are the terms of this Agreement as to both the Administrative Agent and the Lenders hereunder (and any determination by the Administrative Agent that the terms meet the criteria set forth in this clause (b) shall be dispositive) (the “Facility”); provided, that, unless waived by such Lender in writing to the Borrower and the Administrative Agent, each such Lender shall have a bona fide right of first refusal (for a period of not less than 10 days after the Lenders’ receipt of written notice of, and a true, correct and complete copy of, the proposal or commitment letter with respect to, the Facility) to agree to participate in the Facility (it being understood that no Lender shall be obligated to participate in the Facility).

“Recipient”: any Agent or a Lender, as applicable.

“Refunded Swingline Loans”: as defined in Section 2.7(b).

“Register”: is defined in Section 10.6(c).

“Regulation T”: Regulation T of the Board as in effect from time to time.

“Regulation U”: Regulation U of the Board as in effect from time to time.

“Regulation X”: Regulation X of the Board as in effect from time to time.
“Related Parties”: with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“Replacement Lender”: as defined in Section 2.23.

“Required Lenders”: at any time: (a) if only one Lender holds the Total Revolving Commitments, such Lender, and (b) if more than one Lender holds the Total Revolving Commitments, then at least two Lenders (who are not Affiliates of one another if two such Lenders exist) who together hold more than 50% of the Total Revolving Commitments (including, without duplication, the L/C Commitments) then in effect or, if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding; provided that for the purposes of clause (b), the Revolving Commitments of, and the portion of the Revolving Loans and participations in L/C Exposure and Swingline Loans held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Requirement of Law”: as to any Person, the Operating Documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserves”: as of any date of determination, (a) those reserves that the Collateral Agents may, acting in their reasonable credit judgment, establish from time to time, including, without limitation, reserves to (i) reflect events, conditions, contingencies or risks which do or may adversely affect (A) the Collateral, (B) the assets of the Borrower, (C) the Liens (held by the Administrative Agent for the ratable benefit of the Secured Parties) and other rights of the Administrative Agent in the Collateral, and/or (D) the Borrowing Base, (ii) address currency fluctuation risk with respect to any Accounts of the Borrower payable in foreign currencies, (iii) address any state of facts which the Collateral Agents determine in good faith constitutes or with the passage of time may constitute an Event of Default, (iv) address accounts payable aged in excess of historical levels, (v) with respect to Eligible In-Transit Inventory, account for (1) the estimated costs relating to unpaid freight charges, warehousing or storage charges, taxes, duties, and other similar unpaid costs associated with the acquisition of such Eligible In-Transit Inventory, plus (2) the estimated reclamation claims of unpaid sellers of such Eligible In-Transit Inventory and/or (vi) address risk associated with rebates, discounts, warranty claims, shrinkage and returns, recalls (including, without limitation, with respect to the “FitBit Force”), or other matters that Collateral Agents deem necessary or appropriate to establish and maintain reserves with respect to against the Borrowing Base, (b) the Inventory Reporting Reserve, (c) the Returns Reserve, and (d) the BrightPoint Reserve.

“Responsible Officer”: the chief executive officer, president, vice president, chief financial officer, treasurer, controller or comptroller of an applicable Loan Party, but in any event, with respect to financial matters, the chief financial officer, treasurer, controller or comptroller of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payments”: as defined in Section 7.6.

“Returns Reserve”: a Reserve that the Collateral Agents may, acting in their reasonable credit judgment, establish from time to time to account for risk of returned merchandise, which Returns Reserve may be implemented by Collateral Agents in their discretion by establishing or increasing Reserves, by implementing eligibility criteria, or in any combination thereof (without duplication).
“Revolving Commitment”: as to any Lender, the obligation of such Lender, if any, to make Revolving Loans and participate in Swingline Loans and Letters of Credit in an aggregate principal amount not to exceed the amount set forth under the heading “Revolving Commitment” opposite such Lender’s name on Schedule 1.1A or in the Assignment and Assumption or the Increase Joinder pursuant to which such Lender becomes a party hereto, as the same may be changed from time to time pursuant to the terms hereof (including in connection with assignments and Increases permitted hereunder). The amount of each Lender’s Revolving Commitment shall be reduced on a pro rata basis in accordance with such Lender’s Revolving Percentage upon the reduction of the Total Revolving Commitments in accordance with the last sentence of the definition thereof.

“Revolving Commitment Period”: the period from and including the Closing Date to the Revolving Termination Date.

“Revolving Extensions of Credit”: as to any Revolving Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Loans held by such Lender then outstanding, plus (b) such Lender’s L/C Percentage of the aggregate undrawn amount of all outstanding Letters of Credit (including any Existing Letters of Credit) at such time, plus (c) such Lender’s L/C Percentage of the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time, plus (d) such Lender’s Revolving Percentage of the aggregate principal amount of Swingline Loans then outstanding.

“Revolving Facility”: the Revolving Commitments and the extensions of credit made thereunder.

“Revolving Lender”: each Lender that has a Revolving Commitment or that holds Revolving Loans.

“Revolving Loan Conversion”: as defined in Section 3.5(b).

“Revolving Loan Funding Office”: the office of the Administrative Agent specified in Section 10.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

“Revolving Loan Note”: a promissory note in the form of Exhibit H-1, as it may be amended, supplemented or otherwise modified from time to time.

“Revolving Loans”: as defined in Section 2.4(a).

“Revolving Percentage”: as to any Revolving Lender at any time, the percentage which such Lender’s Revolving Commitment then constitutes of the Total Revolving Commitments or, at any time after the Revolving Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender’s Revolving Loans then outstanding constitutes of the aggregate principal amount of all Revolving Loans then outstanding; provided that in the event that the Revolving Loans are paid in full prior to the reduction to zero of the Total Revolving Commitments, the Revolving Percentages shall be determined in a manner designed to ensure that the other outstanding Revolving Extensions of Credit shall be held by the Revolving Lenders on a comparable basis.

“Revolving Termination Date”: August 13, 2018.


“Sale Leaseback Transaction”: any arrangement with any Person or Persons, whereby in contemporaneous or substantially contemporaneous transactions a Loan Party sells substantially all of its right, title and interest in any property and, in connection therewith, acquires, leases or licenses back the right to use all or a material portion of such property.
“Sanctioned Entity”: (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, (d) a Person resident in or determined to be resident in a country, in each case, that is subject to, or the target of, a country sanctions program administered and enforced by OFAC.

“Sanctioned Person”: a Person named on the list of Specially Designated Nationals maintained by OFAC.


“SEC”: the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

“Secured Obligations”: as defined in the Guarantee and Collateral Agreement.

“Secured Parties”: the collective reference to each Agent, the Lenders (including the Issuing Lender in its capacity as Issuing Lender and any Swingline Lender in its capacity as Swingline Lender), each Bank Services Provider (in its capacity as a provider of Bank Services), and any Qualified Counterparties.

“Securities Account”: any “securities account” as defined in the UCC with such additions to such term as may hereafter be made.

“Securities Account Control Agreement”: any Control Agreement entered into by the Administrative Agent, a Loan Party and a securities intermediary holding a Securities Account of such Loan Party pursuant to which the Administrative Agent is granted “control” (for purposes of the UCC) over such Securities Account.

“Securities Act”: the Securities Act of 1933, as amended from time to time and any successor statute.

“Security Documents”: the collective reference to (a) the Guarantee and Collateral Agreement, (b) the Mortgages, (c) the Intellectual Property Security Agreements, (d) the SAM Securities Account Control Agreement, (e) each Deposit Account Control Agreement, (f) each Securities Account Control Agreement, (g) all other security documents hereafter delivered to the Administrative Agent granting a Lien on any property of any Person to secure the Obligations of any Loan Party arising under any Loan Document, (h) all other security documents hereinafter delivered to the Administrative Agent, for the benefit of any Bank Services Provider or Qualified Counterparty, or any of its applicable Affiliates granting a Lien on any property of any Person to secure the Obligations of any Group Member arising under any Bank Services Agreement or any Specified Swap Agreement, and (i) all financing statements, fixture filings, assignments, acknowledgments and other filings, documents and agreements made or delivered pursuant to any of the foregoing.

“Solvency Certificate”: the Solvency Certificate, dated the Closing Date, delivered to the Administrative Agent and the Lenders pursuant to Section 5.1(s), which Solvency Certificate shall be in substantially the form of Exhibit D.
“Solvent”: when used with respect to any Person, as of any date of determination, (a) the amount of the “fair value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise,” as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the “present fair saleable value” of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) “debt” means liability on a “claim,” and (ii) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

“Specified Swap Agreement”: any Swap Agreement entered into by the Borrower or any of its Subsidiaries and any Qualified Counterparty (or any Person who was a Qualified Counterparty as of the Closing Date or as of the date such Swap Agreement was entered into) in respect of interest rates to the extent permitted under Section 7.13.

“Streamline Conditions”: as of any date of determination, that no Default or Event of Default has occurred and is continuing, Borrower has Liquidity of greater than $25,000,000.

“Streamline Period”: the period (a) commencing on the first day of a calendar month (such first day, a “Streamline Commencement Date”) following the date on which the Borrower provides a Liquidity Report to the Administrative Agent (such date of delivery, the “Streamline Delivery Date”) indicating, to the reasonable satisfaction of the Administrative Agent, that at all times on each consecutive day in the immediately preceding calendar month and on each day after the end of such calendar month through the Business Day immediately preceding the Streamline Delivery Date, that all Streamline Conditions were satisfied and (b) terminating on the earlier to occur of (i) the occurrence of a Default or Event of Default, and (ii) the first calendar day after the Streamline Delivery Date (a “Streamline Termination Date”), on which it is determined that the Borrower has failed to satisfy any Streamline Condition. Upon the termination of a Streamline Period in accordance with the preceding sentence, the Borrower must satisfy all of the Streamline Conditions each consecutive day for one (1) entire fiscal quarter as determined by the Administrative Agent in its discretion, prior to entering into a subsequent Streamline Period. The Borrower shall give the Administrative Agent prior written notice of the Borrower’s election to enter into any such Streamline Period, and each such Streamline Period shall commence on the first day of the calendar month following the date that all of the Streamline Conditions have been satisfied.

“Subordinated Debt Document”: any agreement, certificate, document or instrument executed or delivered by any Loan Party or any of their respective Subsidiaries and evidencing Subordinated Indebtedness of such Loan Party or such Subsidiary, and any renewals, modifications, or amendments thereof which are approved in writing by the Administrative Agent and the Required Lenders.

“Subordinated Indebtedness”: Indebtedness of a Loan Party subordinated to the Obligations pursuant to subordination terms (including payment, lien and remedies subordination terms, as applicable) reasonably acceptable to the Required Lenders.

“Subordinated Lenders”: each of the lenders from time to time party to the Subordinated Loan Agreement.
“Subordinated Loan Agreement”: that certain Subordinated Loan and Security Agreement, dated as of September 28, 2012, by and among the Subordinated Lenders and the Borrower, as amended, restated, modified, or supplemented from time to time.

“Subsidiary”: as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Surety Indebtedness”: as of any date of determination, indebtedness (contingent or otherwise) owing to sureties arising from surety bonds issued on behalf of any Loan Party or its respective Subsidiaries as support for, among other things, their contracts with customers, whether such indebtedness is owing directly or indirectly by such Loan Party or any such Subsidiary.

“SVB”: as defined in the preamble hereto.

“Swap Agreement”: any agreement with respect to any swap, hedge, forward, future or derivative transaction or option or similar agreement (including without limitation, any Interest Rate Agreement) involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower and its Subsidiaries shall be deemed to be a “Swap Agreement.”

“Swap Termination Value”: in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Qualified Counterparty).

“Swingline Commitment”: the obligation of the Swingline Lender to make Swingline Loans pursuant to Section 2.6 in an aggregate principal amount at any one time outstanding not to exceed $25,000,000.

“Swingline Lender”: SVB, in its capacity as the lender of Swingline Loans.

“Swingline Loan Note”: a promissory note in the form of Exhibit H-2, as it may be amended, supplemented or otherwise modified from time to time.

“Swingline Loans”: as defined in Section 2.6.

“Swingline Participation Amount”: as defined in Section 2.7(c).

“Syndication Agents”: as defined in the preamble hereto.
“**Synthetic Lease Obligation**” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease or (b) an agreement for the use of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Total Credit Exposure**” means, as to any Lender at any time, the unused Revolving Commitments and Revolving Extensions of Credit of such Lender at such time.

“**Total L/C Commitments**” means at any time, the sum of all L/C Commitments at such time, as the same may be reduced from time to time pursuant to Section 2.10 or 3.5(b). The initial amount of the Total L/C Commitments on the Closing Date is $50,000,000.

“**Total Revolving Commitments**” means at any time, the aggregate amount of the Revolving Commitments then in effect. The original amount of the Total Revolving Commitments is $180,000,000. The L/C Commitment and the Swingline Commitment are each sublimits of the Total Revolving Commitments. The Total Revolving Commitments shall be reduced on a dollar-for-dollar basis by the amount of Qualifying Foreign Subsidiary Indebtedness incurred pursuant to the terms of this Agreement.

“**Total Revolving Extensions of Credit**” means at any time, the aggregate amount of the Revolving Extensions of Credit outstanding at such time.

“**Trade Date**” means defined in Section 10.6(b)(i)(B).

“**Transaction Report**” means a report in substantially the form of Exhibit I or in such other form as shall be acceptable in form and substance to the Collateral Agents.

“**Transactions**” means as defined in Section 5.1(b).

“**Transferee**” means any Eligible Assignee or Participant.

“**Type**” means as to any Loan, its nature as an ABR Loan or a Eurodollar Loan.

“**Unfriendly Acquisition**” means any acquisition that has not, at the time of the first public announcement of an offer relating thereto, been approved by the board of directors (or other legally recognized governing body) of the Person to be acquired; except that with respect to any acquisition of a non-U.S. Person, an otherwise friendly acquisition shall not be deemed to be unfriendly if it is not customary in such jurisdiction to obtain such approval prior to the first public announcement of an offer relating to a friendly acquisition.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in the State of New York, or as the context may require, any other applicable jurisdiction.

“**United States**” or “**U.S.**” means the United States of America.

“**Usage Percentage**” means the result, expressed as a percentage, of (a) (i) the initial amount of all Revolving Commitments plus, if applicable, any commitments in respect of Increases to the Revolving Commitments, minus (ii) the sum of (x) the aggregate undrawn amount of all outstanding Letters of Credit at such time, (y) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted
into Revolving Loans at such time, and (z) the aggregate principal balance of any Loans outstanding at such time, divided by (b) the initial amount of all Revolving Commitments plus, if applicable, any commitments in respect of Increases to the Revolving Commitments.

“USCRO”: the U.S. Copyright Office.

“USPTO”: the U.S. Patent and Trademark Office.

“U.S. Person”: any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate”: as defined in Section 2.20(f).

“Withholding Agent”: as applicable, any of any applicable Loan Party and the Administrative Agent, as the context may require.

1.2 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and in any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms relating to any Group Member not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP, (ii) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation,” (iii) the word “incur” shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings), (iv) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights, and (v) references to agreements (including this Agreement) or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated, amended and restated or otherwise modified from time to time. Notwithstanding the foregoing clause (i), for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of any Group Member shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(c) The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified. The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (ii) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (iii) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.
d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

SECTION 2
AMOUNT AND TERMS OF REVOLVING COMMITMENTS

2.1 [Reserved.]
2.2 [Reserved.]
2.3 [Reserved.]
2.4 Revolving Commitments.
(a) Subject to the terms and conditions hereof, each Revolving Lender severally agrees to make revolving credit loans (each, a “Revolving Loan” and, collectively, the “Revolving Loans”) to the Borrower from time to time during the Revolving Commitment Period in an aggregate principal amount with respect to all such Revolving Loans at any one time outstanding which, when added to the aggregate outstanding amount of any Revolving Loans, any Swingline Loans, the aggregate undrawn amount of all outstanding Letters of Credit, and the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans, incurred on behalf of the Borrower and owing to such Lender, does not exceed the lesser of (y) the amount of such Lender’s Revolving Commitment and (z) such Lender’s Revolving Percentage of the Borrowing Base in effect at such time. In addition, the amount of the Total Revolving Extensions of Credit outstanding at such time shall not exceed the lesser of (i) the Total Revolving Commitments in effect at such time and (ii) the Borrowing Base in effect at such time. During the Revolving Commitment Period the Borrower may use the Revolving Commitments by borrowing, prepaying the Revolving Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Revolving Loans may from time to time be Eurodollar Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5 and 2.13. Notwithstanding anything to the contrary contained herein, during the existence of an Event of Default, no Revolving Loan may be borrowed as, converted to or continued as a Eurodollar Loan.

(b) The Borrower shall repay all outstanding Revolving Loans (including all Over advances and Protective Over advances) on the Revolving Termination Date.

(c) All Revolving Loans shall be made only in Dollars.

2.5 Procedure for Revolving Loan Borrowing. The Borrower may borrow up to the Available Revolving Commitment under the Revolving Commitments during the Revolving Commitment Period on any Business Day; provided that the Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing (which must be received by the Administrative Agent prior to 10:00 A.M., Pacific time, (a) three (3) Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (b) one (1) Business Day prior to the requested Borrowing Date, in the case of ABR Loans (in each case, with originals to follow within three (3) Business Days)) (provided that any such Notice of Borrowing of ABR Loans under the Revolving Facility to finance payments under Section 3.5(a) may be given not later than 10:00 A.M., Pacific time, on the date of the proposed borrowing), in each such case specifying (i) the amount and Type of Revolving Loans to be borrowed, (ii) the requested Borrowing Date, (iii) in the case of Eurodollar Loans, the respective amounts of each such Type of Loan and the respective lengths of the initial Interest Period therefor, and (iv) instructions for remittance of the proceeds of the applicable Loans to be borrowed. Unless otherwise agreed by the Administrative Agent in its sole discretion, no Revolving Loan may be made as, converted into

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or continued as a Eurodollar Loan having an Interest Period in excess of one month prior to the date that is 30 days after the Closing Date. Each borrowing of, conversion to or continuation of a Eurodollar Loan shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof (or, if the then aggregate Available Revolving Commitments are less than $1,000,000, such lesser amount). Except as provided in Sections 3.5(b) and 2.7(b), each borrowing of or conversion to ABR Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof (or, if the then aggregate Available Revolving Commitments are less than $1,000,000, such lesser amount). Upon receipt of any such Notice of Borrowing from the Borrower, the Administrative Agent shall promptly notify each Revolving Lender thereof. Each Revolving Lender will make the amount of its pro rata share of each such borrowing available to the Administrative Agent for the account of the Borrower at the Revolving Loan Funding Office prior to 12:00 P.M., Pacific time, on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent crediting such account as is designated in writing to the Administrative Agent by the Borrower with the aggregate of the amounts made available to the Administrative Agent by the Revolving Lenders and in like funds as received by the Administrative Agent or, if so specified in the Flow of Funds Agreement, the Administrative Agent shall wire transfer all or a portion of such aggregate amounts to the Subordinated Lenders (for application against amounts then outstanding under the Subordinated Loan Agreement), in accordance with the wire instructions specified for such purpose in the Flow of Funds Agreement. No Revolving Loan which constitutes a Eurodollar Loan will be made on the Closing Date.

2.6 Swingline Commitment. Subject to the terms and conditions hereof, the Swingline Lender agrees to make available a portion of the credit accommodations otherwise available to the Borrower under the Revolving Commitments from time to time during the Revolving Commitment Period by making swing line loans (each a “Swingline Loan” and, collectively, the “Swingline Loans”) to the Borrower; provided that (a) the aggregate principal amount of Swingline Loans outstanding at any time shall not exceed the Swingline Commitment then in effect, (b) the Borrower shall not request, and the Swingline Lender shall not make, any Swingline Loan if, after giving effect to the making of such Swingline Loan, the aggregate amount of the Available Revolving Commitments would be less than zero, and (c) the Borrower shall not use the proceeds of any Swingline Loan to refinance any then outstanding Swingline Loan. During the Revolving Commitment Period, the Borrower may use the Swingline Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swingline Loans shall be ABR Loans only and shall be made only in Dollars. To the extent not otherwise required by the terms hereof to be repaid prior thereto, the Borrower shall repay to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Revolving Termination Date.

2.7 Procedure for Swingline Borrowing; Refunding of Swingline Loans.

(a) Whenever the Borrower desires that the Swingline Lender make Swingline Loans the Borrower shall give the Swingline Lender irrevocable telephonic or electronic notice (which notice must be received by the Swingline Lender not later than 12:00 P.M., Pacific time, on the proposed Borrowing Date) confirmed promptly in writing by a Notice of Borrowing, specifying (i) the amount to be borrowed, (ii) the requested Borrowing Date (which shall be a Business Day during the Revolving Commitment Period), and (iii) instructions for the remittance of the proceeds of such Loan. Each borrowing under the Swingline Commitment shall be in an amount equal to $1,000,000 or a whole multiple of $100,000 in excess thereof. Promptly thereafter, on the Borrowing Date specified in a notice in respect of Swingline Loans, the Swingline Lender shall make available to the Borrower an amount in immediately available funds equal to the amount of the Swingline Loan to be made by depositing such amount in the account designated in writing to the Administrative Agent by the Borrower. Unless a Swingline Loan is sooner refinanced by the advance of a Revolving Loan pursuant to Section 2.7(b), such Swingline Loan shall be repaid by the Borrower no later than five (5) Business Days after the advance of such Swingline Loan.
The Swingline Lender shall, no less frequently than weekly (or on a more frequent basis if so determined by the Swingline Lender in its sole discretion), on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), on one (1) Business Day’s telephonic notice given by the Swingline Lender no later than 12:00 P.M., Pacific time, and promptly confirmed in writing, request each Revolving Lender to make, and each Revolving Lender hereby agrees to make, a Revolving Loan, in an amount equal to such Revolving Lender’s Revolving Percentage of the aggregate amount of such Swingline Loan (each a “Refunded Swingline Loan”) outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Lender shall make the amount of such Revolving Loan available to the Administrative Agent at the Revolving Loan Funding Office in immediately available funds, not later than 10:00 A.M., Pacific time, on the date of such notice. The proceeds of such Revolving Loan shall immediately be made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Refunded Swingline Loan. The Borrower irrevocably authorizes the Swingline Lender to charge the Borrower’s accounts with the Administrative Agent (up to the amount available in each such account) immediately to pay the amount of any Refunded Swingline Loan to the extent amounts received from the Revolving Lenders are not sufficient to repay in full such Refunded Swingline Loan.

If prior to the time that the Borrower has repaid the Swingline Loans pursuant to Section 2.7(a) or a Revolving Loan has been made pursuant to Section 2.7(b), one of the events described in Section 8.1(f) shall have occurred or if for any other reason, as determined by the Swingline Lender in its sole discretion, Revolving Loans may not be made as contemplated by Section 2.7(b), each Revolving Lender shall, on the date such Revolving Loan was to have been made pursuant to the notice referred to in Section 2.7(b) or on the date requested by the Swingline Lender (with at least one (1) Business Days’ notice to the Revolving Lenders), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the “Swingline Participation Amount”) equal to (i) such Revolving Lender’s Revolving Percentage times (ii) the sum of the aggregate principal amount of the outstanding Swingline Loans that were to have been repaid with such Revolving Loans.

Whenever, at any time after the Swingline Lender has received from any Revolving Lender such Lender’s Swingline Participation Amount, the Swingline Lender receives any payment on account of the Swingline Loans, the Swingline Lender will distribute to such Lender its Swingline Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender’s participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Lender’s pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swingline Loans then due); provided that in the event that such payment received by the Swingline Lender is required to be returned, such Revolving Lender will return to the Swingline Lender any portion thereof previously distributed to it by the Swingline Lender.

Each Revolving Lender’s obligation to make the Loans referred to in Section 2.7(b) and to purchase participating interests pursuant to Section 2.7(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Revolving Lender or the Borrower may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other Revolving Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

The Swingline Lender may resign at any time by giving 30 days’ prior notice to the Administrative Agent, the Lenders and the Borrower. After the resignation of the Swingline Lender hereunder, the retiring Swingline Lender shall remain a party hereto and shall continue to have all the rights...
2.8 Over advances.

(a) If at any time or for any reason the amount of the Total Revolving Extensions of Credit exceeds the lesser of (x) the amount of the Total Revolving Commitments then in effect, and (y) the amount of the Borrowing Base then in effect (any such excess, an “Over advance”), the Borrower shall pay the full amount of such Over advance to the Administrative Agent for application against the Revolving Extensions of Credit in accordance with the terms hereof; provided that any such repayment of an Over advance shall be applied by the Administrative Agent first to repay Revolving Loans that are ABR Loans and thereafter to Revolving Loans that are Eurodollar Loans. Any prepayment of any Revolving Loan that is a Eurodollar Loan hereunder shall be subject to Borrower’s obligation to pay any amounts owing pursuant to Section 2.21.

(b) Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent, in its sole discretion, may make Revolving Loans to the Borrower on behalf of the Lenders, so long as the aggregate amount of such Revolving Loans shall not exceed the lesser of (y) 5% of the Borrowing Base and (z) 5% of the Revolving Commitment, if the Administrative Agent, in its reasonable credit judgment, deems that such Revolving Loans are necessary or desirable (i) to protect all or any portion of the Collateral, (ii) to enhance the likelihood or maximize the amount of repayment of the Loans and the other Obligations or (iii) to pay any other amount chargeable to the Borrower pursuant to this Agreement (such Revolving Loans, “Protective Over advances”); provided that (A) in no event shall the Total Revolving Extensions of Credit exceed the amount of the Total Revolving Commitments then in effect and (B) the Borrower shall repay each Protective Over advance on the date which the earlier of (y) the 30th day after the date of incurrence of such Protective Over advance and (z) the date the Required Lenders provide written notice to the Administrative Agent and the Borrower requiring the Borrower to repay such Protective Over advance. Each applicable Lender shall be obligated to advance to the Borrower its Revolving Percentage of each Protective Over advance made in accordance with this Section 2.8(b). If Protective Over advances are made in accordance with the preceding sentence, then all Revolving Lenders shall be bound to make, or permit to remain outstanding, such Protective Over advances based upon their Revolving Percentages in accordance with the terms of this Agreement. All Protective Over advances shall be secured by the Collateral and shall bear interest as provided in this Agreement for Revolving Loans generally.

2.9 Fees.

(a) Upfront Fee. On or prior to the Closing Date, the Borrower agrees to pay to the Administrative Agent an upfront fee for the account of the Lenders in the amount specified in the Fee Letter.

(b) Commitment Fee. As additional compensation for the Total Revolving Commitments, the Borrower shall pay to the Administrative Agent for the account of the Lenders, a fee for the Borrower’s non-use of available funds under the Revolving Facility (the “Commitment Fee”), payable quarterly in arrears on the first day of each calendar quarter occurring after the Closing Date prior to the Revolving Termination Date, and on the Revolving Termination Date, in an amount equal to the Commitment Fee Rate multiplied by the average unused portion of the Total Revolving Commitments, as reasonably determined by the Administrative Agent. The unused portion of the Total Revolving Commitments, for purposes of this calculation, shall equal the difference between (i) the Total Revolving Commitments (as reduced from time to time), and (ii) the sum of (A) the average for the period of the daily closing balance of the Revolving Loans outstanding, (B) the aggregate undrawn amount of all Letters of Credit outstanding at such time, and (C) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or
converted into Revolving Loans at such time. For the avoidance of doubt, the outstanding amount of any Swingline Loans shall not be counted towards or considered usage of the Total Revolving Commitments for purposes of determining the Commitment Fee.

(c) **Agency Fees.** The Borrower agrees to pay to the Administrative Agent the fees in the amounts and on the dates as set forth in the Fee Letter and to perform any other obligations contained therein.

(d) **[Reserved.]**

(e) **Fees Nonrefundable.** All fees payable under this Section 2.9 shall be fully earned on the date paid and nonrefundable.

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2.10 **Termination or Reduction of Total Revolving Commitments; Total L/C Commitments.**

(a) **Termination or Reduction of Total Revolving Commitments.** The Borrower shall have the right, upon not less than three (3) Business Days’ written notice delivered to the Administrative Agent, to terminate the Total Revolving Commitments or, from time to time, to reduce the amount of the Total Revolving Commitments; provided that no such termination or reduction shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Loans and Swingline Loans to be made on the effective date thereof the amount of the Total Revolving Extensions of Credit then outstanding would exceed the lesser of (A) the Total Revolving Commitments then in effect, and (B) the Borrowing Base then in effect. Any such reduction shall be in an amount equal to $1,000,000, or a whole multiple in excess thereof (or, if the then Total Revolving Commitments are less than $1,000,000, such lesser amount), and shall reduce permanently the Total Revolving Commitments then in effect; provided that, if in connection with any such reduction or termination of the Total Revolving Commitments a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21. Any reduction of the Total Revolving Commitments shall be applied to the Revolving Commitments of each Lender according to its respective Revolving Percentage. All fees accrued until the effective date of any termination of the Total Revolving Commitments shall be paid on the effective date of such termination.

(b) **Termination or Reduction of Total L/C Commitments.** The Borrower shall have the right, upon not less than three (3) Business Days’ written notice delivered to the Administrative Agent, to terminate the Total L/C Commitments available to the Borrower or, from time to time, to reduce the amount of the Total L/C Commitments available to the Borrower; provided that, in any such case, no such termination or reduction of the Total L/C Commitments shall be permitted if, after giving effect thereto, the Total L/C Commitments shall be reduced to an amount that would result in the aggregate L/C Exposures exceeding the Total L/C Commitments (as so reduced). Any such reduction shall be in an amount equal to $1,000,000, or a whole multiple in excess thereof (or, if the then Total L/C Commitments are less than $1,000,000, such lesser amount), and shall reduce permanently the Total L/C Commitments then in effect. Any reduction of the Total L/C Commitments shall be applied to the L/C Commitments of each Lender according to its respective L/C Percentage. All fees accrued until the effective date of any termination of the Total L/C Commitments shall be paid on the effective date of such termination.

2.11 **Optional Loan Prepayments.** The Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent no later than 10:00 A.M., Pacific time, three (3) Business Days prior thereto, in the case of Eurodollar Loans, and no later than 10:00 A.M., Pacific time, one (1) Business Day prior thereto, in the case of ABR Loans, which notice shall specify the date and amount of the proposed prepayment; provided that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21; and provided, further, that if such
notice of prepayment indicates that such prepayment is to be funded with the proceeds of a refinancing, such notice of prepayment may be revoked if the financing is not consummated. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of Revolving Loans that are ABR Loans and Swingline Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Revolving Loans shall be in an aggregate principal amount of $1,000,000 or a whole multiple thereof. Partial prepayments of Swingline Loans shall be in an aggregate principal amount of $100,000 or a whole multiple thereof.

2.12 Incremental Facility.

(a) At any time during the Revolving Commitment Period, the Borrower may request (but subject to the conditions set forth in clause (b), below) the Total Revolving Commitment be increased by an amount not to exceed the Available Revolving Increase Amount (each such increase, an “Increase”). The Administrative Agent shall invite each Lender to increase its Revolving Commitments (it being understood that no Lender shall be obligated to increase its Revolving Commitments) in connection with a proposed Increase. Any Increase shall be in an amount of at least $10,000,000 and integral multiples of $5,000,000 in excess thereof. Additionally, for the avoidance of doubt, it is understood and agreed that in no event shall the aggregate amount of the Increases to the Total Revolving Commitments exceed $70,000,000 during the term of the Agreement.

(b) Each of the following shall be conditions precedent to any Increase of the Revolving Commitments in connection therewith:

(i) any Increase shall be on the same terms (including the pricing, and maturity date), as applicable, as, and pursuant to documentation applicable to, the original Revolving Facility;

(ii) the Borrower shall have delivered an irrevocable written request for such Increase at least ten (10) Business Days prior to the requested funding date of such Increase;

(iii) each Lender agreeing to such Increase, the Borrower and the Administrative Agent have signed an Increase Joinder (any Increase Joinder may, with the consent of the Administrative Agent, the Borrower and the Lenders agreeing to such Increase, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate to effectuate the provisions of this Section 2.12) and the Borrower shall have executed any Notes requested by any Lender in connection with the making of the Increase (it being understood and agreed that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, an Increase Joinder reasonably satisfactory to the Collateral Agents, and the amendments to this Agreement effected thereby (so long as such amendments only implement the increase permitted hereby), shall not require the consent of any Lender other than the Lender(s) agreeing to fund such Increase);

(iv) each of the conditions precedent set forth in Section 5.2 are satisfied;

(v) after giving pro forma effect to such Increase and the use of proceeds therefrom, (A) no Default or Event of Default shall have occurred and be continuing at the time of such Increase, (B) the Borrower shall be in compliance with each of the financial covenants set forth in Section 7.1 hereof (calculated with respect to Section 7.1(a) and (b), as follows (y) as of the end of the most recently ended quarter for which financial statements have been delivered prior to such Increase, (z) as though such Increase were made on the last day of such quarter, (C) if the most recently ended quarter for which financial statements have been delivered prior to such Increase is a period prior to March 31, 2014, then Borrower and its Subsidiaries shall have a Consolidated Fixed Charge Coverage Ratio of greater than or equal to 1.10:1.00 for the four quarter period ended on the last day of most recently ended quarter for which financial statements
have been delivered (calculated as though such Increase were made on the last day of such quarter), and (D) the Borrower shall have delivered to the Administrative Agent a Compliance Certificate evidencing compliance with the requirements of this clause (v), together with all reasonably detailed calculations demonstrating such compliance; and

(vi) in connection with such Increase, the Borrower shall pay to Administrative Agent all fees required to be paid pursuant to the terms of the Fee Letter.

(c) Upon the funding of any Increase, (i) all references in this Agreement and any other Loan Document to the Revolving Loans shall be deemed, unless the context otherwise requires, to include such Increase advanced pursuant to this Section 2.12 and (ii) all references in this Agreement and any other Loan Document to the Revolving Commitment shall be deemed, unless the context otherwise requires, to include the commitment to advance an amount equal to such Increase pursuant to this Section 2.12.

(d) The Revolving Loans and Revolving Commitments established pursuant to this Section 2.12 shall constitute Revolving Loans and Revolving Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from any guarantees and the security interests created by the Loan Documents. The Borrower shall take any actions reasonably required by Administrative Agent to ensure and demonstrate that the Liens and security interests granted by the Loan Documents continue to be perfected under the Code or otherwise after giving effect to the establishment of any such new Revolving Commitments.

2.13 Conversion and Continuation Options.

(a) The Borrower may elect from time to time to convert Eurodollar Loans to ABR Loans by giving the Administrative Agent prior irrevocable notice in a Notice of Conversion/Continuation of such election no later than 10:00 A.M., Pacific time, on the Business Day preceding the proposed conversion date; provided that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto. Subject to Section 2.17, the Borrower may elect from time to time to convert ABR Loans to Eurodollar Loans by giving the Administrative Agent prior irrevocable notice in a Notice of Conversion/Continuation of such election no later than 10:00 A.M., Pacific time, on the third Business Day preceding the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor); provided that no ABR Loan may be converted into a Eurodollar Loan when any Event of Default has occurred and is continuing. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) Subject to Section 2.17, any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice in a Notice of Conversion/Continuation to the Administrative Agent by no later than 10:00 A.M., Pacific time, on the date occurring three Business Days preceding the proposed continuation date and otherwise in accordance with the applicable provisions of the term “Interest Period” set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans; provided that no Eurodollar Loan may be continued as such when any Event of Default has occurred and is continuing; and provided, further, that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso, such Loans shall automatically be converted to ABR Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.
2.14 Limitations on Eurodollar Tranches. Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of Eurodollar Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Eurodollar Tranche shall be equal to $1,000,000 or a whole multiple of $ 100,000 in excess thereof, and (b) no more than seven (7) Eurodollar Tranches shall be outstanding at any one time.

2.15 Interest Rates and Payment Dates.

(a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to (i) the Eurodollar Rate determined for such day plus (ii) the Applicable Margin.

(b) Each ABR Loan (including any Swingline Loan) shall bear interest at a rate per annum equal to (i) the ABR plus (ii) the Applicable Margin.

(c) During the continuance of an Event of Default, at the request of the Required Lenders, (i) all outstanding Loans shall bear interest at a rate per annum equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section 2.15 plus 2.00% (the “Default Rate”) and (ii) the Letter of Credit Fee and other amounts shall be increased by a percentage equal to the Default Rate; provided that the Default Rate shall apply to all outstanding Loans and the Letter of Credit Fee automatically and without any Required Lender consent therefor upon the occurrence of any Event of Default arising under Section 8.1(a).

(d) Interest on the outstanding principal amount of each Loan shall be payable in arrears on each Interest Payment Date; provided that interest accruing pursuant to Section 2.15(c) shall be payable from time to time on demand.

2.16 Computation of Interest and Fees.

(a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to ABR Loans the rate of interest on which is calculated on the basis of the Prime Rate, the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the ABR or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate pursuant to Section 2.16(a).

2.17 Inability to Determine Interest Rate. If prior to the first day of any Interest Period, the Administrative Agent or the Required Lenders (after consultation with the Administrative Agent) shall have determined (which determination shall be conclusive and binding upon the Borrower) in connection with any request for a Eurodollar Loan or a conversion to or a continuation thereof that, by reason of circumstances affecting the relevant market, (a) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such requested Loan or conversion or continuation, as applicable, (b) adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such

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Interest Period, or (c) the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Loans during such Interest Period, then, in any such case (a), (b) or (c), the Administrative Agent shall promptly notify the Borrower and the relevant Lenders thereof as soon as practicable thereafter. Any such determination shall specify the basis for such determination and shall, in the absence of manifest error, be conclusive and binding for all purposes. Thereafter, (x) any Eurodollar Loans under the relevant Facility requested to be made on the first day of such Interest Period shall be made as ABR Loans, (y) any Loans under the relevant Facility that were to have been converted on the first day of such Interest Period to Eurodollar Loans shall be continued as ABR Loans and (z) any outstanding Eurodollar Loans under the relevant Facility shall be converted, on the last day of the then-current Interest Period, to ABR Loans. Until such notice has been withdrawn by the Administrative Agent, no further Eurodollar Loans under the relevant Facility shall be made or continued as such, nor shall the Borrower have the right to convert Loans under the relevant Facility to Eurodollar Loans.

2.18 Pro Rata Treatment and Payments.

(a) Each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee and any reduction of the Revolving Commitments shall be made pro rata according to the respective L/C Percentages or Revolving Percentages, as the case may be, of the relevant Lenders.

(b) [Reserved.]

(c) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Revolving Loans shall be made pro rata according to the respective outstanding principal amounts of the Revolving Loans then held by the Revolving Lenders.

(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff and shall be made prior to 10:00 A.M., Pacific time, on the due date thereof to the Administrative Agent, for the account of the Lenders, at the applicable Revolving Loan Funding Office, in Dollars and in immediately available funds. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. Any payment received by the Administrative Agent after 10:00 A.M. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(e) Unless the Administrative Agent shall have been notified in writing by any Lender prior to the date of any borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent on such date in accordance with Section 2, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not in fact made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender and the Borrower severally agree to pay to the Administrative Agent, on demand, such corresponding amount with interest thereon, for each day from and
including the date on which such amount is made available to the Borrower but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, a rate equal to the greater of (A) the Federal Funds Effective Rate and (B) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by the Borrower, the rate per annum applicable to ABR Loans under the relevant Facility. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender’s Loan included in such borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(f) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower is making such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Nothing herein shall be deemed to limit the rights of Administrative Agent or any Lender against any Loan Party.

(g) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Section 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable extension of credit set forth in Section 5.1 or Section 5.2 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(h) The obligations of the Lenders hereunder to (i) make Revolving Loans, (ii) to fund its participations in L/C Disbursements in accordance with its respective L/C Percentage, (iii) to fund its respective Swingline Participation Amount of any Swingline Loan, and (iv) to make payments pursuant to Section 9.7, as applicable, are several and not joint. The failure of any Lender to make any such Loan, to fund any such participation or to make any such payment under Section 9.7 on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 9.7.

(i) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(j) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest, fees, Over advances and Protective Over advances then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest, fees, Over advances and Protective Over advances then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.
(k) If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the principal of or interest on any Loan made by it, its participation in the L/C Exposure or other obligations hereunder, as applicable (other than pursuant to a provision hereof providing for non-pro rata treatment), in excess of its Revolving Percentage or L/C Percentage, as applicable, of such payment on account of the Loans or participations obtained by all of the Lenders, such Lender shall forthwith advise the Administrative Agent of the receipt of such payment, and within five (5) Business Days of such receipt purchase (for cash at face value) from the other Revolving Lenders or L/C Lenders, as applicable (through the Administrative Agent), without recourse, such participations in the Revolving Loans made by them and/or participations in the L/C Exposure held by them, as applicable, or make such other adjustments as shall be equitable, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of the other Lenders in accordance with their respective Revolving Percentages or L/C Percentages, as applicable; provided, however, that if all or any portion of such excess payment is thereafter recovered by or on behalf of the Borrower from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.18 (k) may exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. No documentation other than notices and the like referred to in this Section 2.18(k) shall be required to implement the terms of this Section 2.18(k). The Administrative Agent shall keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased pursuant to this Section 2.18(k) and shall in each case notify the Revolving Lenders or the L/C Lenders, as applicable, following any such purchase. The provisions of this Section 2.18(k) shall not be construed to apply to (i) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (ii) the application of Cash Collateral provided for in Section 3.10, or (iii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or sub-participations in any L/C Exposure to any assignee or participant, other than an assignment to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrower consents on behalf of itself and each other Loan Party to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation.

(l) Notwithstanding anything to the contrary in this Agreement, the Administrative Agent may, in its discretion at any time or from time to time, without the Borrower’s request and even if the conditions set forth in Section 5.2 would not be satisfied, make a Revolving Loan in an amount equal to the portion of the Obligations constituting overdue interest and fees and Swingline Loans from time to time due and payable to itself, any Revolving Lender, the Swingline Lender or the Issuing Lender, and apply the proceeds of any such Revolving Loan to those Obligations; provided that after giving effect to any such Revolving Loan, the aggregate outstanding Revolving Loans will not exceed the Total Revolving Commitments then in effect.

2.19 Illegality; Requirements of Law.

(a) Illegality. If any Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender to make, maintain or fund Eurodollar Loans, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or
sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Loans or to convert ABR Loans to Eurodollar Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to ABR Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

(b) Requirements of Law. If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by a Governmental Authority having jurisdiction or the compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority made subsequent to the date hereof:

(i) shall subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in the definition of Excluded Taxes and (C) Connection Income Taxes) on its Loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

(ii) shall impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurodollar Rate); or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing is to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining Loans determined with reference to the Eurodollar Rate or of maintaining its obligation to make such Loans, or to increase the cost to such Lender or such other Recipient of issuing or participating in Letters of Credit, or to reduce any amount receivable or received by such Lender or other Recipient hereunder in respect thereof (whether in respect of principal, interest or any other amount), then, in any such case, upon the request of such Lender or other Recipient and following such Lender’s or Recipient’s delivery of a reasonably detailed written statement to the Borrower explaining the basis for such request, the Borrower shall promptly pay the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(c) If any Lender determines that any change in any Requirement of Law affecting such Lender or any lending office of such Lender or such Lender’s holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender’s capital or on the capital of such Lender’s holding company, if any, as a consequence of this Agreement, the Revolving Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or such Lender’s holding company could have achieved but for such change in such Requirement of Law (taking into consideration such Lender’s policies and the policies of such Lender’s holding company

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with respect to capital adequacy), then from time to time, upon the request of such Lender and following such Lender’s delivery of a reasonably detailed written statement to the Borrower explaining the basis for such request, the Borrower will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender’s or Issuing Lender’s holding company for any such reduction suffered.

(d) For purposes of this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, or directives in connection therewith are deemed to have gone into effect and been adopted after the date of this Agreement, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in any Requirement of Law, regardless of the date enacted, adopted or issued.

(e) A reasonably detailed written certificate as to any additional amounts payable pursuant to paragraphs (b), (c), or (d) of this Section submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 Business Days after receipt of such certificate. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender’s right to demand such compensation. Notwithstanding anything to the contrary in this Section 2.19, the Borrower shall not be required to compensate a Lender pursuant to this Section 2.19 for any amounts incurred more than nine months prior to the date that such Lender notifies the Borrower of such Lender’s intention to claim compensation therefor; provided that if the circumstances giving rise to such claim have a retrospective effect, then such nine-month period shall be extended to include the period of such retroactive effect. The obligations of the Borrower arising pursuant to this Section 2.19 shall survive the Discharge of Obligations and the resignation of the Administrative Agent.

2.20 Taxes

For purposes of this Section 2.20, the term “Lender” includes the Issuing Lender and the term “applicable law” includes FATCA.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law and the Borrower shall, and shall cause each other Loan Party, to comply with the requirements set forth in this Section 2.20. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.20) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes. The Borrower shall, and shall cause each other Loan Party to, timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes applicable to such Loan Party.
(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.20, the Borrower shall, or shall cause such other Loan Party to, deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by Loan Parties. The Borrower shall, and shall cause each other Loan Party to, jointly and severally indemnify each Recipient, within 10 Business Days after demand therefor accompanied by a reasonably detailed written explanation of the amount being demanded, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.20) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto (including any recording and filing fees with respect thereto or resulting therefrom and any liabilities with respect to, or resulting from, any delay in paying such Indemnified Taxes), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. If any Loan Party fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, such Loan Party shall indemnify the Administrative Agent and the Lenders for any incremental taxes, interest or penalties that may become payable by the Administrative Agent or any Lender as a result of any such failure.

(e) Indemnification by Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 10.6 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.20(f)(ii)(A), (i)(D) and (ii)(D) below) shall not be required if the Lender is not legally entitled to complete, execute or deliver such documentation
or, in the Lender’s reasonable judgment, such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and
if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so. Each Foreign Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Foreign Lender shall not be required to deliver any form pursuant to this paragraph that such Foreign Lender is not legally able to deliver.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.20 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party’s obligations under this Section 2.20 shall survive the resignation or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, and the Discharge of Obligations.

2.21 Indemnity. The Borrower agrees to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) a default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) a
default by the Borrower in making any prepayment of or conversion from Eurodollar Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, or (c) for any reason, the making of a prepayment of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such losses and expenses shall be equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, reduced, converted or continued, for the period from the date of such prepayment or of such failure to borrow, reduce, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, reduce, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest or other return for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any), over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. A certificate as to any amounts payable pursuant to this Section submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error. This covenant shall survive the Discharge of Obligations.

2.22 Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.19(b), Section 2.19(c), Section 2.20(a) or Section 2.20(d) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate a different lending office for funding or booking its Loans affected by such event or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, in each case, with the object of avoiding the consequences of such event; provided that such designation is made on terms that, in the sole judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal, regulatory or other disadvantage; provided further that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 2.19(b), Section 2.19(c), Section 2.20(a) or Section 2.20(d). The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment made at the request of the Borrower.

2.23 Substitution of Lenders. Upon the receipt by the Borrower of any of the following (or in the case of clause (a) below, if the Borrower is required to pay any such amount), with respect to any Lender (any such Lender described in clauses (a) through (c) below being referred to as an “Affected Lender” hereunder):

(a) a request from a Lender for payment of Indemnified Taxes or additional amounts under Section 2.20 or of increased costs pursuant to Section 2.19 (and, in any such case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.22 or is a Non-Consenting Lender);

(b) a notice from the Administrative Agent under Section 10.1(b) that one or more Minority Lenders are unwilling to agree to an amendment or other modification approved by the Required Lenders and the Administrative Agent; or

(c) notice from the Administrative Agent that a Lender is a Defaulting Lender;

then the Borrower may, at its sole expense and effort, upon notice to the Administrative Agent and such Affected Lender: (i) request that one or more of the other Lenders acquire and assume all or part of such Affected Lender’s Loans and Revolving Commitments; or (ii) designate a replacement lending institution (which shall be required to be an Eligible Assignee) to acquire and assume all or a ratable part of such Affected Lender’s Loans and Revolving Commitments (the replacing Lender or lender in (i) or (ii) being a “Replacement Lender”); provided, however, that the Borrower shall be liable for the payment upon demand of all costs and other amounts arising under Section 2.21 that result from the acquisition of any Affected
Lender’s Loan and/or Revolving Commitments (or any portion thereof) by a Lender or Replacement Lender, as the case may be, on a date other than the last day of the applicable Interest Period with respect to any Eurodollar Loans then outstanding; and provided further, however, that if the Borrower elects to exercise such right with respect to any Affected Lender under clause (a) or (b) of this Section 2.23, then the Borrower shall be obligated to replace all Affected Lenders under such clauses. The Affected Lender replaced pursuant to this Section 2.23 shall be required to assign and delegate, without recourse, all of its interests, rights and obligations under this Agreement and the related Loan Documents to one or more Replacement Lenders that so agree to acquire and assume all or a ratable part of such Affected Lender’s Loans and Revolving Commitments upon payment to such Affected Lender of an amount (in the aggregate for all Replacement Lenders) equal to 100% of the outstanding principal of the Affected Lender’s Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from such Replacement Lenders (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including amounts under Section 2.21 hereof). Any such designation of a Replacement Lender shall be effected in accordance with, and subject to the terms and conditions of, the assignment provisions contained in Section 10.6 (with the assignment fee to be paid by the Borrower in such instance), and, if such Replacement Lender is not already a Lender hereunder or an Affiliate of a Lender or an Approved Fund, shall be subject to the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, with respect to any assignment pursuant to this Section 2.23, (a) in the case of any such assignment resulting from a claim for compensation under Section 2.19 or payments required to be made pursuant to Section 2.20, such assignment shall result in a reduction in such compensation or payments thereafter; (b) such assignment shall not conflict with applicable law and (c) in the case of any assignment resulting from a Lender being a Minority Lender referred to in clause (b) of this Section 2.23, the applicable assignee shall have consented to the applicable amendment, waiver or consent. Notwithstanding the foregoing, an Affected Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Affected Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

2.24 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender’s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.1 and in the definition of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise, and including any amounts made available to the Administrative Agent by such Defaulting Lender pursuant to Section 10.7), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Lender or to the Swingline Lender hereunder; third, to be held as Cash Collateral for the funding obligations of such Defaulting Lender of any participation in any Letter of Credit; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender’s potential future funding obligations with respect to Loans under this Agreement, and (y) be held as Cash Collateral for the future funding obligations of such Defaulting
Lender of any participation in any future Letter of Credit; sixth, to the payment of any amounts owing to any L/C Lender, the Issuing Lender or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any L/C Lender, the Issuing Lender or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Loans or L/C Advances in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans or L/C Advances were made at a time when the conditions set forth in Section 5.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Advances owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Advances owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Advances and Swingline Loans are held by the Lenders pro rata in accordance with the Revolving Commitments under the applicable Facility without giving effect to Section 2.24(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.24(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.9(b) for any period during which such Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender).

(B) Each Defaulting Lender shall be limited in its right to receive Letter of Credit Fees as provided in Section 3.3(d).

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such Letter of Credit Fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender’s participation in Letters of Credit or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Issuing Lender and to the Swingline Lender, as applicable, the amount of any such fee or Letter of Credit Fee, as applicable, otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Lender’s or the Swingline Lender’s Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee or Letter of Credit Fee, as applicable.

(iv) Reallocation of Pro Rata Share to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 3.4 or in Swingline Loans pursuant to Section 2.7(c), the L/C Percentage of each non-Defaulting Lender of any such Letter of Credit and the Revolving Percentage of each non-Defaulting Lender of any such Swingline Loan, as the case may be, shall be computed without giving effect to the Revolving Commitment of such Defaulting Lender; provided that, (A) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Event of Default has occurred and is continuing; (B) the aggregate obligations of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swingline Loans shall not exceed the positive difference, if any, of (1) the Revolving Commitment of that non-Defaulting Lender minus (2) the aggregate outstanding amount of the Revolving Loans and
participation interests in respect of Swingline Loans of that Lender plus the aggregate amount of that Lender’s L/C Percentage of then outstanding Letters of Credit and (C) the conditions set forth in Section 5.2 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time). No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a non-Defaulting Lender as a result of such non-Defaulting Lender’s increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lender’s Fronting Exposure, and (y) second, Cash Collateralize the Issuing Lender’s Fronting Exposure in accordance with the procedures set forth in Section 3.10.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and the Issuing Lender agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a pro rata basis by the Lenders in accordance with their respective Revolving Percentages and L/C Percentages, as applicable (without giving effect to Section 2.24(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure in respect of Letters of Credit after giving effect thereto.

(d) Termination of Defaulting Lender. The Borrower may terminate the unused amount of the Revolving Commitment of any Revolving Lender that is a Defaulting Lender upon not less than ten (10) Business Days’ prior notice to the Administrative Agent (which shall promptly notify the Lenders thereof), and in such event the provisions of Section 2.24(a)(ii) will apply to all amounts thereafter paid by the Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); provided that (i) no Event of Default shall have occurred and be continuing, and (ii) such termination shall not be deemed to be a waiver or release of any claim the Borrower, the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender may have against such Defaulting Lender.

2.25 [Reserved.]

2.26 Notes. If so requested by any Lender by written notice to the Borrower (with a copy to the Administrative Agent), the Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) (promptly after the Borrower’s receipt of such notice) a Note or Notes to evidence such Lender’s Loans.
SECTION 3
LETTERS OF CREDIT

3.1 L/C Commitment.

(a) Subject to the terms and conditions hereof, the Issuing Lender agrees to issue letters of credit ("Letters of Credit") for the account of the Borrower on any Business Day during the Letter of Credit Availability Period in such form as may reasonably be approved from time to time by the Issuing Lender; provided that the Issuing Lender shall not issue any Letter of Credit if, after giving effect to such issuance, the L/C Exposure would exceed either the Total L/C Commitments or the Available Revolving Commitment at such time. Each Letter of Credit shall (i) be denominated in Dollars and (ii) expire no later than the earlier of (x) the first anniversary of its date of issuance and (y) the Letter of Credit Maturity Date, provided that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (y) above). For the avoidance of doubt, no commercial letters of credit shall be issued by the Issuing Lender to any Person under this Agreement.

(b) The Issuing Lender shall not at any time be obligated to issue any Letter of Credit if:

(i) such issuance would conflict with, or cause the Issuing Lender or any L/C Lender to exceed any limits imposed by, any applicable Requirement of Law;

(ii) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender fromissuing, amending or reinstating such Letter of Credit, or any law, rule or regulation applicable to the Issuing Lender or any request, guideline or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance, amendment, renewal or reinstatement of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Lender is not otherwise compensated) not in effect on the Closing Date, or shall impose upon the Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Lender in good faith deems material to it;

(iii) the Issuing Lender has received written notice from any Lender, the Administrative Agent or the Borrower, at least one (1) Business Day prior to the requested date of issuance, amendment, renewal or reinstatement of such Letter of Credit, that one or more of the applicable conditions contained in Section 5.2 shall not then be satisfied (which notice shall contain a description of any such condition asserted not to be satisfied);

(iv) any requested Letter of Credit is not in form and substance acceptable to the Issuing Lender, or the issuance, amendment or renewal of a Letter of Credit shall violate any applicable laws or regulations or any applicable policies of the Issuing Lender;

(v) such Letter of Credit contains any provisions providing for automatic reinstatement of the stated amount after any drawing thereunder;

(vi) except as otherwise agreed by the Administrative Agent and the Issuing Lender, such Letter of Credit is in an initial face amount less than $500,000; or
any Lender is at that time a Defaulting Lender, unless the Issuing Lender has entered into arrangements, including the delivery of Cash Collateral pursuant to Section 3.10, satisfactory to the Issuing Lender (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate the Issuing Lender’s actual or potential Fronting Exposure (after giving effect to Section 2.24(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Exposure as to which the Issuing Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion.

3.2 Procedure for Issuance of Letters of Credit. The Borrower may from time to time request that the Issuing Lender issue a Letter of Credit for the account of the Borrower by delivering to the Issuing Lender at its address for notices specified herein an Application therefor, completed to the satisfaction of the Issuing Lender, and such other certificates, documents and other papers and information as the Issuing Lender may request. Upon receipt of any Application, the Issuing Lender will process such Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall promptly issue the Letter of Credit requested thereby (but in no event shall the Issuing Lender be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed to by the Issuing Lender and the Borrower. The Issuing Lender shall furnish a copy of such Letter of Credit to the Borrower promptly following the issuance thereof. The Issuing Lender shall promptly furnish to the Administrative Agent, which shall in turn promptly furnish to the Lenders, notice of the issuance of each Letter of Credit (including the amount thereof).

3.3 Fees and Other Charges.

(a) The Borrower agrees to pay, with respect to each Existing Letter of Credit and each outstanding Letter of Credit issued for the account of (or at the request of) the Borrower, (i) a fronting fee of 0.125% per annum on the daily amount available to be drawn under each such Letter of Credit to the Issuing Lender for its own account (a “Letter of Credit Fronting Fee”), (ii) a letter of credit fee at a rate per annum equal to the Applicable Margin for Eurodollar Loans multiplied by the daily amount available to be drawn under each such Letter of Credit on the drawable amount of such Letter of Credit to the Administrative Agent for the ratable account of the L/C Lenders (determined in accordance with their respective L/C Percentages) (a “Letter of Credit Fee”), and (iii) the Issuing Lender’s standard and reasonable fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit issued for the account of (or at the request of) such Revolving Borrower or processing of drawings thereunder (the fees in this clause (iii), collectively, the “Issuing Lender Fees”). The Issuing Lender Fees shall be paid when required by the Issuing Lender, and the Letter of Credit Fronting Fee and the Letter of Credit Fee shall be payable quarterly in arrears on the last Business Day of March, June, September and December of each year and on the Letter of Credit Maturity Date (each, an “L/C Fee Payment Date”) after the issuance date of such Letter of Credit. All Letter of Credit Fronting Fees and Letter of Credit Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

(b) In addition to the foregoing fees, the Borrower shall pay or reimburse the Issuing Lender for such normal and customary costs and expenses as are incurred or charged by the Issuing Lender in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit.

(c) The Borrower shall furnish to the Issuing Lender and the Administrative Agent such other documents and information pertaining to any requested Letter of Credit issuance, amendment or renewal, including any L/C-Related Documents, as the Issuing Lender or the Administrative Agent may require. This Agreement shall control in the event of any conflict with any L/C-Related Document (other than any Letter of Credit).
(d) Any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the Issuing Lender pursuant to Section 3.10 shall be payable, to the maximum extent permitted by applicable law, to the other L/C Lenders in accordance with the upward adjustments in their respective L/C Percentages allocable to such Letter of Credit pursuant to Section 2.24(a)(iv), with the balance of such Letter of Credit Fees, if any, payable to the Issuing Lender for its own account.

(e) All fees payable pursuant to this Section 3.3 shall be fully-earned on the date paid and shall not be refundable for any reason.

3.4 L/C Participations; Existing Letters of Credit.

(a) L/C Participations. The Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Lender, and, to induce the Issuing Lender to issue Letters of Credit, each L/C Lender irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender, on the terms and conditions set forth below, for such L/C Lender’s own account and risk an undivided interest equal to such L/C Lender’s L/C Percentage in the Issuing Lender’s obligations and rights under and in respect of each Letter of Credit and the amount of each draft paid by the Issuing Lender thereunder. Each L/C Lender agrees with the Issuing Lender that, if a draft is paid under any Letter of Credit for which the Issuing Lender is not reimbursed in full by the Borrower pursuant to Section 3.5(a), such L/C Lender shall pay to the Issuing Lender upon demand at the Issuing Lender’s address for notices specified herein an amount equal to such L/C Lender’s L/C Percentage of the amount of such draft, or any part thereof, that is not so reimbursed. Each L/C Lender’s obligation to pay such amount shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such L/C Lender may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5.2, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other L/C Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(b) Existing Letters of Credit. On and after the Closing Date, each Existing Letter of Credit shall be deemed for all purposes, including for purposes of the fees to be collected pursuant to Sections 3.3(a) and (b), reimbursement of costs and expenses to the extent provided herein and for purposes of being secured by the Collateral, a Letter of Credit outstanding under this Agreement and entitled to the benefits of this Agreement and the other Loan Documents, and shall be governed by the applications and agreements pertaining thereto and by this Agreement (which shall control in the event of a conflict).

3.5 Reimbursement.

(a) If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, the Issuing Lender shall notify the Borrower and the Administrative Agent thereof and the Borrower shall pay or cause to be paid to the Issuing Lender an amount equal to the entire amount of such L/C Disbursement not later than (i) the immediately following Business Day if the Issuing Lender issues such notice before 10:00 a.m. Pacific time on the date of such L/C Disbursement, or (ii) on the second following Business Day if the Issuing Lender issues such notice at or after 10:00 a.m. Pacific time on the date of such L/C Disbursement. Each such payment shall be made to the Issuing Lender at its address for notices referred to herein in Dollars and in immediately available funds.
(b) If the Issuing Lender shall not have received from the Borrower the payment that it is required to make pursuant to Section 3.5(a) with respect to a Letter of Credit within the time specified in such Section, the Issuing Lender will promptly notify the Administrative Agent of the L/C Disbursement and the Administrative Agent will promptly notify each L/C Lender of such L/C Disbursement and its L/C Percentage thereof, and each L/C Lender shall pay to the Issuing Lender upon demand at the Issuing Lender’s address for notices specified herein an amount equal to such L/C Lender’s L/C Percentage of such L/C Disbursement (and the Administrative Agent may apply Cash Collateral provided for this purpose) and upon such payment pursuant to this paragraph to reimburse the Issuing Lender for any L/C Disbursement, the Borrower shall be required to reimburse the L/C Lenders for such payments (including interest accrued thereon from the date of such payment until the date of such reimbursement at the rate applicable to Revolving Loans that are ABR Loans plus 2% per annum) on demand; provided that if at the time of and after giving effect to such payment by the L/C Lenders, the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.2 are satisfied, the Borrower may, by written notice to the Administrative Agent certifying that such conditions are satisfied and that all interest owing under this paragraph has been paid, request that such payments by the L/C Lenders be converted into Revolving Loans (a “Revolving Loan Conversion”), in which case, if such conditions are in fact satisfied, the L/C Lenders shall be deemed to have extended, and the Borrower shall be deemed to have accepted, a Revolving Loan in the aggregate principal amount of such payment without further action on the part of any party, and the Total L/C Commitments shall be permanently reduced by such amount; any amount so paid pursuant to this paragraph shall, on and after the payment date thereof, be deemed to be Revolving Loans for all purposes hereunder; provided that the Issuing Lender, at its option, may effectuate a Revolving Loan Conversion regardless of whether the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.2 are satisfied.

3.6 Obligations Absolute. The Borrower’s obligations under this Section 3 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower may have or have had against the Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with the Issuing Lender that the Issuing Lender shall not be responsible for, and the Borrower’s obligations hereunder shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. The Issuing Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Issuing Lender. The Borrower agrees that any action taken or omitted by the Issuing Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct, shall be binding on the Borrower and shall not result in any liability of the Issuing Lender to the Borrower.

In addition to amounts payable as elsewhere provided in the Agreement, the Borrower hereby agrees to pay and to protect, indemnify, and save Issuing Lender harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys’ fees and allocated costs of internal counsel) that the Issuing Lender may incur or be subject to as a consequence, direct or indirect, of (A) the issuance of any Letter of Credit, or (B) the failure of Issuing Lender or of any L/C Lender to honor a demand for payment under any Letter of Credit thereof as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority, in each case other than to the extent solely as a result of the gross negligence or willful misconduct of Issuing Lender or such L/C Lender (as finally determined by a court of competent jurisdiction).
3.7 Letter of Credit Payments. If any draft shall be presented for payment under any Letter of Credit, the Issuing Lender shall promptly notify the Borrower and the Administrative Agent of the date and amount thereof. The responsibility of the Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentation are substantially in conformity with such Letter of Credit.

3.8 Applications. To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 3, the provisions of this Section 3 shall apply.

3.9 Interim Interest. If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, then, unless either the Borrower shall have reimbursed such L/C Disbursement in full within the time period specified in Section 3.5(a) or the L/C Lenders shall have reimbursed such L/C Disbursement in full on such date as provided in Section 3.5(b), in each case the unpaid amount thereof shall bear interest for the account of the Issuing Lender, for each day from and including the date of such L/C Disbursement to but excluding the date of payment by the Borrower, at the rate per annum that would apply to such amount if such amount were a Revolving Loan that is an ABR Loan; provided that the provisions of Section 2.15(c) shall be applicable to any such amounts not paid when due.

3.10 Cash Collateral.

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the Issuing Lender (i) if the Issuing Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Advance by all the L/C Lenders that is not reimbursed by the Borrower or converted into a Revolving Loan pursuant to Section 3.5(b), or (ii) if, as of the Letter of Credit Maturity Date, any L/C Exposure for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then effective L/C Exposure in an amount equal to 105% of such L/C Exposure.

At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the request of the Administrative Agent or the Issuing Lender (with a copy to the Administrative Agent), the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover 105% of the Fronting Exposure relating to the Letters of Credit (after giving effect to Section 2.24(a)(iv) and any Cash Collateral provided by such Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts with the Administrative Agent. The Borrower, and to the extent provided by any Lender or Defaulting Lender, such Lender or Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Lender and the L/C Lenders, and agrees to maintain, a first priority security interest and Lien in all such Cash Collateral and in all proceeds thereof, as security for the Obligations to which such Cash Collateral may be applied pursuant to Section 3.10(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or any Issuing Lender as herein provided, or that the total amount of such Cash Collateral is less than 105% of the applicable L/C Exposure, Fronting Exposure and other Obligations secured thereby, the Borrower or the relevant Lender or Defaulting Lender, as applicable, will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by such Defaulting Lender).
(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 3.10, Section 2.24 or otherwise in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Exposure, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure in respect of Letters of Credit or other Obligations shall no longer be required to be held as Cash Collateral pursuant to this Section 3.10 following (i) the elimination of the applicable Fronting Exposure and other Obligations giving rise thereto (including by the termination of the Defaulting Lender status of the applicable Lender), or (ii) a determination by the Administrative Agent and the Issuing Lender that there exists excess Cash Collateral; provided, however, (A) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of an Event of Default, and (B) that, subject to Section 2.24, the Person providing such Cash Collateral and the Issuing Lender may agree that such Cash Collateral shall not be released but instead shall be held to support future anticipated Fronting Exposure or other obligations, and provided further, that to the extent that such Cash Collateral was provided by the Borrower or any other Loan Party, such Cash Collateral shall remain subject to any security interest and Lien granted pursuant to the Loan Documents.

3.11 [Reserved.]

3.12 Resignation of the Issuing Lender. The Issuing Lender may resign at any time by giving at least 30 days’ prior written notice to the Administrative Agent, the Lenders and the Borrower. Subject to the next succeeding paragraph, upon the acceptance of any appointment as the Issuing Lender hereunder by a Lender that shall agree to serve as successor Issuing Lender, such successor shall succeed to and become vested with all the interests, rights and obligations of the retiring Issuing Lender and the retiring Issuing Lender shall be discharged from its obligations to issue additional Letters of Credit hereunder without affecting its rights and obligations with respect to Letters of Credit previously issued by it. At the time such resignation shall become effective, the Borrower shall pay all accrued and unpaid fees pursuant to Section 3.3. The acceptance of any appointment as the Issuing Lender hereunder by a successor Lender shall be evidenced by an agreement entered into by such successor, in a form satisfactory to the Borrower and the Administrative Agent, and, from and after the effective date of such agreement, (i) such successor Lender shall have all the rights and obligations of the previous Issuing Lender under this Agreement and the other Loan Documents (other than with respect to the rights of the retiring Issuing Lender with respect to Letters of Credit issued by such retiring Issuing Lender) and (ii) references therein and in the other Loan Documents to the term “Issuing Lender” shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the resignation of the Issuing Lender hereunder, the retiring Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit or to extend, renew or increase any existing Letter of Credit.

3.13 Applicability of ISP. Unless otherwise expressly agreed by the Issuing Lender and the Borrower when a Letter of Credit is issued (including pursuant to any such agreement applicable to any Existing Letter of Credit) and subject to applicable laws, the Letters of Credit shall be governed by and subject to the rules of the ISP.

SECTION 4

REPRESENTATIONS AND WARRANTIES

To induce the Agents and the Lenders to enter into this Agreement, to make the initial Loans on the Closing Date and to make Loans and to issue the Letters of Credit thereafter, the Borrower hereby represents and warrants to the Agents and each Lender, as to itself, each of its Subsidiaries and each other Loan Party, as applicable, that:

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4.1 Financial Condition.

(a) [Reserved].

(b) The audited consolidated balance sheets of the Borrower and its Subsidiaries as of December 31, 2011, December 31, 2012 and December 31, 2013, and the related consolidated statements of income and of cash flows for the fiscal years ended on such dates, reported on by and accompanied by an unqualified report from PricewaterhouseCoopers, present fairly in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as at such date, and the consolidated results of its operations and its consolidated cash flows for the respective fiscal years then ended. All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein). No Group Member has, as of the Closing Date, any material Guarantee Obligations, material contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph or have been incurred after the date of such financial statements in the ordinary course of such Group Member’s business that, in the case of material contingent liabilities, have not been disclosed to the Lenders. During the period from December 31, 2013 to and including the date hereof, there has been no Disposition by any Group Member of any material part of its business or property.

4.2 No Change. Since December 31, 2013, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

4.3 Existence; Compliance with Law. Each Group Member (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and in good standing under the laws of each jurisdiction where the failure to be so qualified could reasonably be expected to have a Material Adverse Effect and (d) is in material compliance with all Requirements of Law except in such instances in which (i) such Requirement of Law is being contested in good faith by appropriate proceedings diligently conducted and the prosecution of such contest would not reasonably be expected to result in a Material Adverse Effect, or (ii) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

4.4 Power, Authorization; Enforceable Obligations. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No Governmental Approval or consent or authorization of, filing with, notice to or other act by or in respect of, any other Person is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) Governmental Approvals, consents, authorizations, filings and notices described in Schedule 4.4, which Governmental Approvals, consents, authorizations, filings and notices have been obtained or made and are in full force and effect, and (ii) the filings referred to in Section 4.19. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding...
obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors’ rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

4.5 No Legal Bar. The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the borrowings hereunder and the use of the proceeds thereof will not violate any material Requirement of Law (except as set forth in Schedule 4.5 but including any Operating Document of any Group Member) or any material Contractual Obligation of any Group Member and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any material Requirement of Law or any such material Contractual Obligation (other than the Liens created by the Security Documents). No Requirement of Law or Contractual Obligation applicable to the Borrower or any of its Subsidiaries could reasonably be expected to have a Material Adverse Effect. The absence of obtaining the Governmental Approvals described in Schedule 4.5 and the violations of Requirements of Law referenced in Schedule 4.5 shall not have an adverse effect on any rights of the Lenders or any Agent pursuant to the Loan Documents.

4.6 Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened by or against any Group Member or against any of their respective properties or revenues (a) with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby, or (b) that could reasonably be expected to have a Material Adverse Effect.

4.7 No Default. No Group Member is in default under or with respect to any of its Contractual Obligations in any respect that could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing, nor shall either result from the making of a requested credit extension.

4.8 Ownership of Property; Liens; Investments. Each Group Member has title in fee simple to, or a valid leasehold interest in, all of its real property, and good title to, or a valid leasehold interest in, all of its other property, and none of such property is subject to any Lien except as permitted by Section 7.3. No Loan Party owns any Investment except as permitted by Section 7.8. Section 10 of the Collateral Information Certificate sets forth a complete and accurate list of all real property owned by each Loan Party as of the Closing Date, if any. Section 11 of the Collateral Information Certificate sets forth a complete and accurate list of all leases of real property under which any Loan Party is the lessee as of the Closing Date.

4.9 Intellectual Property. Each Group Member owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted; provided that no representation is made in this sentence regarding infringement of rights of other Persons (which representation is the subject of the third sentence of this Section 4.9). No claim has been asserted and is pending by any Person challenging or questioning any Group Member’s use of any Intellectual Property or the validity or effectiveness of any such Group Member’s Intellectual Property, nor does the Borrower know of any valid basis for any such claim, unless such claim could not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Loan Parties, the use of Intellectual Property by each Group Member, and the conduct of such Group Member’s business, as currently conducted, does not infringe on or otherwise violate the rights of any Person, unless such infringement could not reasonably be expected to have a Material Adverse Effect, and there are no claims pending or, to the knowledge of the Borrower, threatened to such effect unless such claim could not reasonably be expected to have a Material Adverse Effect.

4.10 Taxes. Each Group Member has filed or caused to be filed all Federal, all income and all other material state and other tax returns that are required to be filed and has paid all material taxes shown to
be due and payable on said returns or on any assessments made against it or any of its property and all other material taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with, and to the extent required by, GAAP have been provided on the books of the relevant Group Member); no tax Lien has been filed (other than Liens permitted by Section 7.3(c)), and, to the knowledge of the Borrower, no material claim is being asserted, with respect to any such tax, fee or other charge that is not being contested in good faith by appropriate proceedings.

4.11 Federal Regulations. No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used (a) for “buying” or “carrying” any “margin stock” within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect for any purpose that violates the provisions of the Regulations of the Board or (b) for any purpose that violates the provisions of the Regulations of the Board. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

4.12 Labor Matters. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any Group Member pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payment made to employees of each Group Member have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from any Group Member on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant Group Member.

4.13 ERISA. (a) Each Loan Party and each of its respective ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA with respect to each Pension Plan, and have performed all their obligations under each Pension Plan; (b) no ERISA Event has occurred or is reasonably expected to occur; (c) each Loan Party and each of its respective ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Pension Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained; (d) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least 60%, and no Loan Party nor any of its respective ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below 60% as of the most recent valuation date; (e) as of the most recent valuation date for any Pension Plan, the amount of outstanding benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), does not exceed $100,000; (f) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which taxes could be imposed pursuant to Section 4975(c)(1)(A)-(D) of the Code;
all liabilities under each Pension Plan are (i) funded to at least the minimum level required by law, (ii) provided for or recognized in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto or (iii) estimated in the formal notes to the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto; and;

(b) (i) no Loan Party is nor will any such Loan Party be a “plan” within the meaning of Section 4975(e) of the Code; (ii) the respective assets of the Loan Parties do not and will not constitute “plan assets” within the meaning of the United States Department of Labor Regulations set forth in 29 C.F.R. §2510.3-101; (iii) no Loan Party is nor will any such Loan Party be a “governmental plan” within the meaning of Section 3(32) of ERISA; and (iv) transactions by or with any Loan Party are not and will not be subject to state statutes applicable to such Loan Party regulating investments of fiduciaries with respect to governmental plans.

4.14 Investment Company Act; Other Regulations. No Loan Party is an “investment company,” or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended. Except as set forth in Schedule 4.5, no such Loan Party is subject to regulation under any Requirement of Law (other than Regulation X), including the Federal Power Act, that may limit its ability to incur Indebtedness or that may otherwise render all or any portion of the Obligations unenforceable.

4.15 Subsidiaries. Except as disclosed to the Administrative Agent by the Borrower in writing from time to time after the Closing Date, (a) Schedule 4.15 sets forth the name and jurisdiction of organization of the Borrower and each Subsidiary of the Borrower and, as to each such Subsidiary, the percentage of each class of Capital Stock owned by any Loan Party, and (b) there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors’ qualifying shares) of any nature relating to any Capital Stock of the Borrower or any Subsidiary, except as may be created by the Loan Documents.

4.16 Use of Proceeds. The proceeds of the Revolving Loans shall be used to refinance the obligations of the Borrower outstanding under the Subordinated Loan Agreement, to finance Permitted Acquisitions, to pay related fees and expenses and for general corporate purposes. All or a portion of the proceeds of the Swingline Loans and the Letters of Credit shall be used for general corporate purposes.

4.17 Environmental Matters. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) Except as disclosed on Schedule 4.12, to the knowledge of the Group Members, the facilities and properties owned, leased or operated by any Group Member (the “Properties”) do not contain, and have not previously contained, any Materials of Environmental Concern in amounts or concentrations or under circumstances that constitute or have constituted a violation of, or could give rise to liability under, any Environmental Law;

(b) no Group Member has received or is aware of any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties or the business operated by any Group Member (the “Business”), nor does the Borrower have knowledge or reason to believe that any such notice will be received or is being threatened;
(c) no Group Member has transported or disposed of Materials of Environmental Concern from the Properties in violation of, or in a manner or to a location that could give rise to liability under, any Environmental Law, nor has any Group Member generated, treated, stored or disposed of Materials of Environmental Concern at, on or under any of the Properties in violation of, or in a manner that could give rise to liability under, any applicable Environmental Law;

(d) no judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Borrower, threatened, under any Environmental Law to which any Group Member is or will be named as a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business;

(e) there has been no release or threat of release of Materials of Environmental Concern at or from the Properties arising from or related to the operations of any Group Member or otherwise in connection with the Business, in violation of or in amounts or in a manner that could reasonably be expected to give rise to liability under Environmental Laws;

(f) the Properties and all operations of the Group Members at the Properties are in compliance, and have in the last five years been in compliance, with all applicable Environmental Laws, and except as disclosed on Schedule 4.17, to the knowledge of the Borrower, there is no contamination at, under or about the Properties or violation of any Environmental Law with respect to the Properties or the Business; and

(g) no Group Member has assumed any liability of any other Person under Environmental Laws.

4.18 Accuracy of Information, Etc. No statement or information contained in this Agreement, any other Loan Document or any other document, certificate or statement furnished by or on behalf of any Loan Party to any Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not misleading in any material respect. The projections and pro forma financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. There is no fact known to any Responsible Officer that could reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents or in any other documents, certificates and statements furnished to any Agent and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

4.19 Security Documents.

(a) The Guarantee and Collateral Agreement is effective to create in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and the proceeds thereof. In the case of the Pledged Stock, if any, described in the Guarantee and Collateral Agreement that are securities represented by stock certificates or otherwise constituting certificated securities within the meaning of Section 8-102(a)(15) of the UCC or the corresponding code or statute of any other applicable jurisdiction (“Certificated Securities”), when certificates representing such Pledged Stock are delivered to the Administrative Agent, and in the case of the

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other Collateral constituting personal property described in the Guarantee and Collateral Agreement, when financing statements and other filings specified on Schedule 4.19(a) in appropriate form are filed in the offices specified on Schedule 4.19(a), the Administrative Agent, for the benefit of the Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to any other Person (except, in the case of Collateral other than Pledged Stock, Liens permitted by Section 7.3 which are non-consensual permitted Liens, permitted purchase money Liens, or the interests of lessors under capital leases, and otherwise subject to the Intercreditor Agreement). As of the Closing Date, no Loan Party that is a limited liability company or partnership has any Capital Stock that is a not Certificated Security.

(b) Any Mortgages delivered after the Closing Date pursuant to Section 6.12 will be, upon execution, effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof, and when the Mortgages are filed in the offices for the applicable jurisdictions in which the Mortgaged Properties are located, each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person.

4.20 Solvency; Fraudulent Transfer. The Loan Parties are, and after giving effect to the incurrence of all Indebtedness, Obligations and obligations being incurred in connection herewith, Solvent. No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

4.21 Regulation H. No Mortgage encumbers improved real property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has not been made available under the National Flood Insurance Act of 1968.

4.22 Designated Senior Indebtedness. The Loan Documents and all of the Obligations have been deemed “Designated Senior Indebtedness” or a similar concept thereto, if applicable, for purposes of any other Indebtedness of the Loan Parties.

4.23 [Reserved.]  

4.24 Insurance. All insurance maintained by the Loan Parties is in full force and effect, all premiums have been duly paid, no Loan Party has received notice of violation or cancellation thereof, and there exists no default under any requirement of such insurance. Each Loan Party maintains, with financially sound and reputable insurance companies insurance on all its property (and also with respect to its foreign receivables) in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business.

4.25 No Casualty. No Loan Party has received any notice of, nor does any Loan Party have any knowledge of, the occurrence or pendency or contemplation of any Casualty Event affecting all or any material portion of its property.

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4.26 Accounts Receivable; Inventory.

(a) To the extent any Account is designated in any Borrowing Base Certificate as an Eligible Account, such Account constitutes an Eligible Account as of the date of such Borrowing Base Certificate.

(b) All statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing the Accounts are and shall be true and correct and all such invoices, instruments and other documents, and all of the Borrower’s books and records are genuine and in all respects what they purport to be. All sales and other transactions underlying or giving rise to each Account shall comply in all material respects with all applicable laws and governmental rules and regulations. To the best of the Borrower’s knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all Accounts are genuine, and all such documents, instruments and agreements are legally enforceable in accordance with their terms.

(c) As to each item of Inventory that is identified by the Borrower as Eligible Inventory or Eligible In-Transit Inventory in a Borrowing Base Certificate submitted to Agent, such Inventory is (a) of good and merchantable quality, free from known defects, (b) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria) set forth in the definition of Eligible Inventory or Eligible In-Transit Inventory, as applicable, and (c) constitutes Eligible Inventory or Eligible In-Transit Inventory, as applicable, as of the date of such Borrowing Base Certificate.

4.27 Capitalization. Schedule 4.27 sets forth the beneficial owners of all Capital Stock of the Borrower and its’ consolidated Subsidiaries, and the amount of Capital Stock held by each such owner, as of the Closing Date.

4.28 Patriot Act. Each Loan Party is in compliance with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Patriot Act or the Bribery Act 2012. No part of the proceeds of the loans made hereunder will be used by any Loan Party or any of their Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

4.29 OFAC. No Loan Party nor any of its Subsidiaries is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC. No Loan Party nor any of its Subsidiaries (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. No proceeds of any Loan made hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity.

SECTION 5
CONDITIONS PRECEDENT

5.1 Conditions to Initial Extension of Credit. The effectiveness of this Agreement and the obligation of each Lender to make its initial extension of credit hereunder shall be subject to the satisfaction, prior to or concurrently with the making of each such extension of credit on the Closing Date, of the following conditions precedent:
(a) **Loan Documents.** The Collateral Agents shall have received each of the following, each of which shall be in form and substance satisfactory to the Collateral Agents:

(i) this Agreement, executed and delivered by the Agents, the Borrower and each Lender listed on Schedule 1.1A;

(ii) the Collateral Information Certificate, executed by a Responsible Officer of the Loan Parties;

(iii) if required by any Revolving Lender, a Revolving Loan Note executed by the Borrower in favor of such Revolving Lender;

(iv) if required by the Swingline Lender, the Swingline Loan Note executed by the Borrower in favor of such Swingline Lender;

(v) the Guarantee and Collateral Agreement, executed and delivered by the Borrower and each other Grantor named therein;

(vi) the Intercreditor Agreement, executed by the Borrower, the Administrative Agent and the Cash Flow Agent;

(vii) each other Security Document, executed and delivered by the applicable Loan Party party thereto;

(viii) a completed Compliance Certificate dated as of the Closing Date;

(ix) a completed Liquidity Report dated as of the Closing Date;

(x) a completed Transaction Report dated as of the Closing Date; and

(xi) the Flow of Funds Agreement, certified by the Borrower.

(b) [Reserved.]

(c) **Financial Statements.** The Administrative Agent shall have received (i) audited consolidated financial statements of the Borrower for the fiscal years ended as of December 31, 2011, December 31, 2012, and December 31, 2013, and (ii) unaudited interim consolidated financial statements of the Borrower for the fiscal months ended March 31, 2014 and June 30, 2014 and each fiscal quarter ended thereafter that ends at least 15 days before the Closing Date.

(d) **Approvals.** Except for the Governmental Approvals described in Schedule 4.4, all Governmental Approvals and consents and approvals of, or notices to, any other Person (including the holders of any Capital Stock issued by any Loan Party) required in connection with the execution and performance of the Loan Documents, the consummation of the other transactions contemplated hereby, shall have been obtained and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that could reasonably be expected to restrain, prevent or otherwise impose burdensome conditions on the financing contemplated hereby. The absence of obtaining the Governmental Approvals described in Schedule 4.5 shall not have an adverse effect on any rights of the Lenders, any Agent pursuant to the Loan Documents or an adverse effect on the Group Members with regard to their continuing operations.

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Secretary’s or Managing Member’s Certificates; Certified Operating Documents; Good Standing Certificates. The Administrative Agent shall have received a certificate of each Loan Party, dated the Closing Date and executed by the Secretary, Managing Member or equivalent officer of such Loan Party, substantially in the form of Exhibit C, with appropriate insertions and attachments, including (i) the Operating Documents of such Loan Party, (ii) the relevant board resolutions or written consents of such Loan Party adopted by such Loan Party for the purposes of authorizing such Loan Party to enter into and perform the Loan Documents to which such Loan Party is party and (iii) the names, titles, incumbency and signature specimens of those representatives of such Loan Party who have been authorized by such resolutions and/or written consents to execute Loan Documents on behalf of such Loan Party, (iv) a long form good standing certificate for each Loan Party certified as of a recent date by the appropriate Governmental Authority of its respective jurisdiction of organization, and (v) certificates of qualification as a foreign corporation issued by each jurisdiction in which the failure of the applicable Loan Party to be so qualified could reasonably be expected to result in a Material Adverse Effect.

Responsible Officer’s Certificates.

(i) The Administrative Agent shall have received a certificate signed by a Responsible Officer of each Loan Party, dated as of the Closing Date, in form and substance reasonably satisfactory to it, either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required.

(ii) The Administrative Agent shall have received a certificate signed by a Responsible Officer of the Borrower, dated as of the Closing Date and in form and substance reasonably satisfactory to it, certifying (A) that the conditions specified in Sections 5.2(a) and (e) have been satisfied, and (B) that there has been no event or circumstance since December 31, 2013, that has had or that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Patriot Act. The Administrative Agent shall have received, prior to the Closing Date, all documentation and other information required by Governmental Authorities under applicable “know your customer” and anti-money-laundering rules and regulations, including the Patriot Act.

Due Diligence Investigation. The Administrative Agent shall have completed a due diligence investigation of the Borrower and its Subsidiaries in scope, and with results, satisfactory to the Administrative Agent and shall have been given such access to the management, records, books of account, contracts and properties of the Borrower and its Subsidiaries and shall have received such financial, business and other information regarding each of the foregoing Persons and businesses as it shall have requested. No changes or developments shall have occurred, and no new or additional information, shall have been received or discovered by the Administrative Agent or the Lenders regarding the Borrower and its Subsidiaries or the transactions contemplated hereby after the date such due diligence investigation has been completed that (A) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or (B) purports to adversely affect the Facilities or any other aspect of the transactions contemplated hereby, and nothing shall have come to the attention of the Administrative Agent or any Lender to lead them to believe that (x) the Information Materials (as defined in the Engagement Letter) were or have become misleading, incorrect or incomplete in any material respect, or (y) the transactions contemplated hereby will have a Material Adverse Effect.

Reports. The Collateral Agents shall have received, in form and substance satisfactory to such persons, all asset appraisals, field audits, and such other reports and certifications, as it has reasonably requested.
(j) Subordinated Loan Agreement, Etc. The Borrower shall have provided notice to the Subordinated Lenders (in accordance with the terms of the Subordinated Loan Agreement) of its intent to pay all obligations of the Group Members outstanding under the Subordinated Loan Agreement on the Closing Date, (B) the Administrative Agent shall have received the Payoff Letter executed by the Subordinated Lenders and the Borrower, (C) all obligations of the Group Members in respect of the Subordinated Loan Agreement shall, substantially contemporaneously with the funding of certain Loan proceeds on the Closing Date directly to the Subordinated Lenders as contemplated by Sections 2.2 and 2.5 and the Flow of Funds Agreement, have been paid in full, (D) the Administrative Agent shall be satisfied that all actions necessary to terminate the agreements evidencing the obligations of the Group Members in respect of the Subordinated Loan Agreement and the Liens of the Subordinated Lenders in the assets of the Group Members securing obligations under the Subordinated Loan Agreement shall have been, or substantially contemporaneously with the Closing Date, shall be, taken, and (E) the Administrative Agent shall have received such other documents and information related to the Subordinated Loan Agreement and the refinancing thereof as it may request.

(k) Collateral Matters.

(i) Lien Searches. The Administrative Agent shall have received the results of recent lien searches in each of the jurisdictions where any of the Loan Parties is formed or organized, and such searches shall reveal no liens on any of the assets of the Loan Parties except for Liens permitted by Section 7.3, Liens to be discharged on or prior to the Closing Date, or Liens securing obligations of the Group Members under the Subordinated Loan Agreement, which Liens shall be discharged substantially contemporaneously with the Closing Date pursuant to the Payoff Letter.

(ii) Pledged Stock; Stock Powers; Pledged Notes. Subject to Section 5.3, the Administrative Agent shall have received original versions of (A) the certificates representing the shares of Capital Stock pledged to the Administrative Agent (for the ratable benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof, and (B) each promissory note (if any) pledged to the Administrative Agent (for the ratable benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement, endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(iii) Filings, Registrations, Recordings, Agreements, Etc. Each document (including any UCC financing statements, Deposit Account Control Agreements, Securities Account Control Agreements, and landlord access agreements and/or bailee waivers) required by the Loan Documents or under law or reasonably requested by the Administrative Agent to be filed, executed, registered or recorded to create in favor of the Administrative Agent (for the ratable benefit of the Secured Parties) a perfected Lien on the Collateral described therein, prior and superior in right and priority to any Lien in the Collateral held by any other Person (other than with respect to Liens expressly permitted by Section 7.3), shall have been executed (if applicable) and delivered to the Administrative Agent in proper form for filing, registration or recordation.

(l) Insurance. The Administrative Agent shall have received (i) insurance certificates satisfying the requirements of Section 6.6 hereof and Section 5.2(b) of the Guaranty and Collateral Agreement, together with evidence reasonably satisfactory to the Administrative Agent that the insurance policies of each Loan Party have been endorsed for the purpose of naming the Administrative Agent (for the ratable benefit of the Secured Parties) as an “additional insured” or “lender loss payee”, as applicable, with respect to such insurance policies, and (ii) a domestic and a foreign receivables insurance policy issued by EULER American Credit Indemnity under which the Administrative Agent is named as beneficiary or is assigned rights to such claims, in each case of clauses (i) and (ii), in form and substance satisfactory to the Administrative Agent.
(m) **Fees.** The Lenders and the Agents shall have received all fees required to be paid on or prior to the Closing Date (including pursuant to the Fee Letter), and all reasonable and documented fees and expenses for which invoices have been presented (including the reasonable and documented fees and expenses of legal counsel to each Agent) for payment on or before the Closing Date. All such amounts will be paid with proceeds of Loans made on the Closing Date and will be reflected in the Flow of Funds Agreement.

(n) **Legal Opinion.** The Administrative Agent shall have received the executed legal opinion of Fenwick & West LLP, counsel to the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent. Such legal opinion shall cover such matters incident to the transactions contemplated by this Agreement and the other Loan Documents as the Administrative Agent may reasonably require.

(o) **Borrowing Notice.** The Administrative Agent shall have received, in respect of any Revolving Loans to be made on the Closing Date, a completed Notice of Borrowing executed by the Borrower and otherwise complying with the requirements of Section 2.5.

(p) **Solvency Certificate.** The Administrative Agent shall have received a Solvency Certificate from the chief financial officer or treasurer of the Borrower.

(q) **No Material Adverse Effect.** There shall not have occurred since December 31, 2013 any event or condition that has had or could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(r) **No Litigation.** No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Group Member, threatened, that could reasonably be expected to be determined adversely to any Group Member which, if so determined, could reasonably be expected to have a Material Adverse Effect.

(s) **Consistency.** The final terms and conditions of each aspect of the Transaction, including, without limitation, all tax aspects thereof, shall be (i) as described in the Engagement Letter, and otherwise consistent with the description thereof provided to Administrative Agent in writing or (ii) otherwise reasonably satisfactory to Administrative Agent and the Lenders.

(t) **Cash Flow Credit Agreement, Etc.** The Administrative Agent shall have received a fully executed Cash Flow Credit Agreement certified by a Responsible Officer to be a true and complete copy of the Cash Flow Credit Agreement.

For purposes of determining compliance with the conditions specified in this Section 5.1, each Lender that has executed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent (or made available) by the Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender, unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Closing Date specifying such Lender’s objection thereto and either such objection shall not have been withdrawn by notice to the Administrative Agent to that effect on or prior to the Closing Date or, if any extension of credit on the Closing Date has been requested, such Lender shall not have made available to the Administrative Agent on or prior to the Closing Date such Lender’s Revolving Percentage of such requested extension of credit.
5.2 Conditions to Each Extension of Credit. The agreement of each Lender to make any extension of credit requested to be made by it hereunder on any date (including its initial Loans disbursed on the Closing Date but excluding any Revolving Loan Conversion, any conversion of Loans pursuant to Section 2.13(a) and any continuation of Loans pursuant to Section 2.13(b)) is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by each Loan Party in or pursuant to any Loan Document (i) that is qualified by materiality shall be true and correct, and (ii) that is not qualified by materiality, shall be true and correct in all material respects, in each case, on and as of such date as if made on and as of such date, except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects as of such earlier date.

(b) Transaction Report. The Borrower shall have delivered to the Administrative Agent a duly executed original Transaction Report, dated as of the date of the requested extension of credit hereunder (it being understood and agreed that (i) information relating to Eligible Accounts, Eligible In-Transit Inventory, and Eligible Inventory included in such Transaction Report may be the same as set forth in the most recent Transaction Report required to be delivered pursuant to Section 6.2(g)(i) and does not have to be further updated by Borrower as of the date of the requested extension of credit hereunder) and (ii) information as to Revolving Extensions of Credit should include pro forma information giving effect to the requested Revolving Extension of Credit.

(c) Availability. With respect to any requests for any Revolving Extensions of Credit, after giving effect to such Revolving Extension of Credit, the availability and borrowing limitations specified in Section 2.4 and Section 3.1 shall be complied with.

(d) Notices of Borrowing; Other Documentation. The Administrative Agent shall have received a Notice of Borrowing (and with respect to requested Letters of Credit, all documentation required by Section 3.2) in connection with any such request for extension of credit which complies with the requirements hereof.

(e) No Default. No Default or Event of Default shall have occurred and be continuing as of or on such date or after giving effect to the extensions of credit requested to be made on such date.

Each borrowing by and issuance of a Letter of Credit on behalf of the Borrower hereunder and each Revolving Loan Conversion (excluding any Revolving Loan Conversion, any conversion of Loans pursuant to Section 2.13(a) and any continuation of Loans pursuant to Section 2.13(b)) shall constitute a representation and warranty by the Borrower as of the date of such extension of credit or Revolving Loan Conversion, as applicable, that the conditions contained in this Section 5.2 have been satisfied.

5.3 Post-Closing Condition Subsequent.

Within 45 days after the Closing Date (or such other date as the Collateral Agents shall agree in their sole discretion), the Borrower shall cause to be delivered to the Administrative Agent (a) certificates (together with appropriate instruments of transfer, executed in blank), if any, representing up to 66% of the total outstanding voting Capital Stock (and 100% of the non-voting Capital Stock) of each of the Subsidiaries set forth on Schedule 5.3, in each case that is required to be pledged to the Administrative Agent pursuant to the Guarantee and Collateral Agreement, and (b) lender’s loss payable, additional insured and notice of cancellation endorsements, as applicable, with respect to each Group Member’s liability and property insurance policies, in each case, in form and substance reasonably satisfactory to the Administrative Agent.
The Borrower hereby agrees that, at all times prior to the Discharge of Obligations, the Borrower shall and, where applicable, shall cause each of its Subsidiaries to:

6.1 Financial Statements. Furnish to the Administrative Agent, with sufficient copies for distribution to each Lender:

(a) as soon as available, but in any event within 120 days after the end of each fiscal year of the Borrower (or, if earlier, 15 days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC) following a Qualified IPO or other securities offering, a copy of the audited consolidated and consolidating balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such fiscal year and the related audited consolidated and consolidating statements of income and of cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous year, together with an unqualified opinion by PricewaterhouseCoopers or other independent certified public accountants of nationally recognized standing and reasonably acceptable to the Administrative Agent;

(b) [reserved]; and

(c) as soon as available, but in any event not later than 30 days after the end of each month occurring during each fiscal year of the Borrower, the unaudited consolidated and consolidating balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such month and the related unaudited consolidated and consolidating statements of income and of cash flows for such month and the portion of the fiscal year through the end of such month, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer of the Borrower as being fairly stated in all material respects (subject to normal year-end audit adjustments).

All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied (except as approved by such accountants or officer, as the case may be, and disclosed in reasonable detail therein) consistently throughout the periods reflected therein and with prior periods.

6.2 Certificates; Reports; Other Information. Furnish (or, in the case of clause (a), use commercially reasonable efforts to furnish) to the Administrative Agent, for distribution to each Agent and Lender (or, in the case of clause (k), to the relevant Agent or Lender):

(a) [reserved];

(b) concurrently with the delivery of any financial statements pursuant to Section 6.1, (i) a certificate of a Responsible Officer stating that, to the best of such Responsible Officer’s knowledge, each Loan Party during such period has observed or performed all of its covenants and other agreements, and satisfied every condition contained in this Agreement and the other Loan Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and (ii) in the case of all monthly or annual financial statements, (x) a Compliance Certificate containing all information and calculations necessary for determining compliance by each Group Member with the provisions of this Agreement referred to therein as of the last day of the month or fiscal year of the Borrower, as the case may be, and (y) to the extent not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of organization of any Loan Party and a list of any Intellectual Property issued to or acquired by any Loan Party since the date of the most recent report delivered pursuant to this clause (y) (or, in the case of the first such report so delivered, since the Closing Date);
(c) as soon as available, and in any event no later than 45 days after the end of each fiscal year of the Borrower, a detailed consolidated budget for such immediately subsequent fiscal year (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of each fiscal quarter of such fiscal year, the related consolidated statements of projected cash flow, projected changes in financial position and projected income and a description of the underlying assumptions applicable thereto, projected Available Revolving Commitment and covenant compliance for each fiscal quarter period of such fiscal year), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such fiscal year (collectively, the “Projections”), which Projections shall in each case be accompanied by a certificate of a Responsible Officer of the Borrower stating that such Projections are based upon good faith estimates and assumptions believed by the Borrower to be reasonable at the time made, it being recognized that Projections are not to be viewed as fact and that actual results during the period or periods covered by such Projections may differ from the projected results set forth therein by a material amount;

(d) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof (other than routine comment letters from the staff of the SEC relating to the Borrower’s filings with the SEC);

(e) within five days after the same are sent, copies of each annual report, proxy or financial statement or other material report that the Borrower sends to the holders of any class of the Borrower’s debt securities or public equity securities and, within five days after the same are filed, copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(f) upon request by the Administrative Agent, within five days after the same are sent or received, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law and that could reasonably be expected to have a Material Adverse Effect on any of the Governmental Approvals or otherwise on the operations of the Group Members;

(g) (i) (A) if a Streamline Period is not then in effect, not later than 3 days after the end of each week, and (B) while a Streamline Period is in effect, not later than 20 days after the end of each month, and in each case at any other times reasonably requested by any Agent, and (ii) prior to any borrowing of Revolving Loans or making of any Revolving Extensions of Credit, in each case of clauses (i) and (ii): (1) a Transaction Report (including, for the avoidance of doubt, a Borrowing Base Certificate) accompanied by such supporting detail and documentation as shall be requested by any Agent in its reasonable discretion (including supporting schedules and reports relied on to compile the Transaction Report), (2) accounts receivable agings, aged by invoice date, (3) Inventory perpetual reports, (4) accounts payable agings, aged by invoice date, and outstanding or held check registers, if any, (5) a Deferred Revenue schedule, (6) a sell through report, and (7) reconciliations of accounts receivable agings (aged by invoice date) and general ledger;

(h) concurrently with the delivery of the financial statements referred to in Section 6.1(c), copies of all written reports, presentations or memoranda with respect to results of operations or financial information of any Group Member that have been delivered to the Board of Directors of the Borrower for such month, excluding any material determined by the Borrower in good faith to be highly sensitive or confidential;
(i) concurrently with the delivery of the financial statements referred to in Section 6.1(a), a report of a reputable insurance broker with respect to the insurance coverage required to be maintained pursuant to Section 6.6 and the terms of the Guarantee and Collateral Agreement, together with any supplemental reports with respect thereto which any Agent may reasonably request;

(j) (i) if a Streamline Period is not then in effect, not later than 3 days after the end of each week, (ii) while a Streamline Period is in effect, not later than 20 days after the end of each month, and (iii) more frequently as may be reasonably requested by any Agent, a Liquidity Report (together with supporting details, cash reporting, and backup) as of such date;

(k) not later than 20 days after the end of each calendar month, a report, in form and substance reasonably satisfactory to the Collateral Agents, with respect to BrightPoint A/P as of the last day of such month; and

(l) promptly, such additional financial and other information as any Agent or any Lender may from time to time reasonably request.

6.3 Accounts Receivable and Inventory.

(a) Schedules and Documents Relating to Accounts. The Borrower shall deliver to the Collateral Agents (i) Transaction Reports and (ii) schedules of collections, as provided in Section 6.2, on the Administrative Agent’s standard forms. If requested by any Collateral Agent, the Borrower shall furnish the Collateral Agents with copies of all contracts, orders, invoices, and other similar documents, and all shipping instructions, delivery receipts, bills of lading, and other evidence of delivery, for any goods the sale or disposition of which gave rise to the Accounts relating to such collections. In addition, the Borrower shall deliver to the Administrative Agent, upon any Collateral Agent’s reasonable request therefor, the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Accounts, in the same form as received, with all necessary endorsements, and copies of all credit memos.

(b) Disputes. The Borrower shall promptly notify the Collateral Agents of each dispute or claim relating to Accounts which alleges or involves an amount in excess of $100,000. The Borrower may forgive (completely or partially), compromise, or settle any Account for less than payment in full, or agree to do any of the foregoing at any time so long as (i) the Borrower does so in good faith, in a commercially reasonable manner, in the ordinary course of business, in arm’s-length transactions, and promptly reports the same to the Collateral Agents in the regular reports provided to the Collateral Agents (and excluded such account from Eligible Accounts); (ii) no Default or Event of Default has occurred and is continuing at such time; and (iii) after taking into account all such discounts, settlements and forgiveness, the Total Revolving Extensions of Credit then outstanding will not exceed the Available Revolving Commitments then in effect.

(c) Collection of Accounts. Each Loan Party shall (A) establish and maintain cash management services of a type and on terms reasonably satisfactory to the Collateral Agents and shall take reasonable steps to ensure that all of its and its Subsidiaries’ Account Debtors forward payment of the amounts owed by them directly to a Deposit Account subject to a Control Agreement that is a Collection Account, and (B) deposit or cause to be deposited promptly, and in any event no later than the first Business Day after the date of receipt thereof, all of their collections (including those sent directly by their Account Debtors to a Loan Party) into a Deposit Account subject to a Control Agreement that is a Collection Account. Each Loan Party shall hold all payments on, and proceeds of, its Accounts that it receives in trust for the
Administrative Agent and shall immediately deliver all such payments and proceeds to the Administrative Agent in their original form, duly endorsed, by depositing all proceeds of such Accounts into one or more lockbox accounts, or via electronic deposit capture into a “blocked account” as the Administrative Agent may specify (a “Collection Account”), in each case pursuant to a blocked account agreement in such form as the Administrative Agent may specify in its good faith business judgment. Any such amounts actually paid to the Collection Account or otherwise collected by the Administrative Agent pursuant to this Section 6.3(c) shall be applied by the Administrative Agent on a daily basis to the reduction of the Revolving Loans then outstanding; provided that (i) if a Streamline Period is then in effect or (ii) to the extent that (A) any amount of such payments or collections remains after the application by the Administrative Agent thereof to the payment in full of the Revolving Loans then outstanding and the Cash Collateralization of the then effective L/C Exposure in an amount equal to 105% of such L/C Exposure, (B) such remaining amount is not otherwise required to be applied to the Obligations pursuant to any other Section of this Agreement, and (C) no Default or Event of Default has occurred and is continuing, then such remaining amount shall, to the extent permitted by applicable law, be returned to a depository account of the Borrower maintained with the Administrative Agent and subject to a Control Agreement.

(d) Returns. Upon the request of any Collateral Agent, the Borrower shall promptly provide such Agent with an Inventory return history.

(e) Verification. Any Collateral Agent may, from time to time, verify directly with the respective Account Debtors the validity, amount and other matters relating to the Accounts, either in the name of a Borrower or such Agent or such other name as such Agent may choose; provided that, in the event that any Collateral Agent conducts verifications as provided above with respect to any single Account Debtor more than twice per calendar year (absent the occurrence and continuation of an Event of Default), the Administrative Agent will endeavor to provide the Borrower with written notice prior to conducting any such additional verification, provided that failure to provide such written notice shall not adversely affect the right of any Collateral Agent to conduct such verification.

(f) No Liability. The Collateral Agents shall not be responsible or liable for any shortage or discrepancy in, damage to, or loss or destruction of, any goods, the sale or other disposition of which gives rise to an Account, or for any error, act, omission, or delay of any kind occurring in the settlement, failure to settle, collection or failure to collect any Account, or for settling any Account in good faith for less than the full amount thereof, nor shall any Collateral Agent be deemed to be responsible for any of the Borrower’s obligations under any contract or agreement giving rise to an Account. Nothing herein shall, however, relieve any Collateral Agent from liability for its own gross negligence or willful misconduct.

(g) Inventory Report. The Borrower agrees to use commercially reasonable efforts to deliver to the Collateral Agents an Inventory Report on or prior to December 31, 2014; provided that if the Borrower has not delivered such a report by such date, the Collateral Agents may immediately (and without notice to the Borrower) impose Reserves against the Borrowing Base in amounts determined by the Collateral Agents in their reasonable credit judgment (“Inventory Reporting Reserve”), which Inventory Reporting Reserve shall remain in effect until such time as the Borrower has delivered an Inventory Report to the Collateral Agents. Once the first such Inventory Report is delivered to the Collateral Agents, the Borrower agrees to deliver an updated Inventory Report at the times the Borrower is required to deliver a Transaction Report to the Administrative Agent in accordance with Section 6.2(g).

6.4 Payment of Obligations; Taxes.

(a) Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations (including all material Taxes and material Other Taxes imposed by law on an applicable Loan Party) of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Group Member.
6.5 Maintenance of Existence; Compliance. (a)(i) Preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain or obtain all Governmental Approvals and all other rights, privileges and franchises necessary in the normal conduct of its business or necessary for the performance by such Person of its Obligations under any Loan Document, except, in each case, as otherwise permitted by Section 7.4 and except, in the case of clause (ii) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) comply with all Contractual Obligations (including with respect to leasehold interests of the Borrower) and Requirements of Law except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect; and (c) comply with each Governmental Approval, and any term, condition, rule, filing or fee obligation, or other requirement related thereto, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, the Borrower shall, and shall cause each of its ERISA Affiliates to: (1) maintain each Pension Plan in compliance in all material respects with the applicable provisions of ERISA, the Code or other Federal or state law; (2) cause each Pension Plan to maintain its qualified status under Section 401(a) of the Code; (3) make all required contributions to any Pension Plan; (4) not become a party to any Multiemployer Plan; (5) ensure that all liabilities under each Pension Plan are either (x) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing such Pension Plan; (y) insured with a reputable insurance company; or (z) provided for or recognized in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto; and (6) ensure that the contributions or premium payments to or in respect of each Pension Plan are and continue to be promptly paid at no less than the rates required under the rules of such Pension Plan and in accordance with the most recent actuarial advice received in relation to such Pension Plan and applicable law.

6.6 Maintenance of Property; Insurance. (a) Keep all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies insurance on all its property (and also with respect to its foreign receivables) in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business.

6.7 Inspection of Property; Books and Records; Discussions. (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) permit representatives and independent contractors of any Collateral Agent and any Lender to visit and inspect any of its properties and examine and make abstracts from any of its books and records at any reasonable time and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Group Members with officers, directors and employees of the Group Members and with their independent certified public accountants. Unless a Default or an Event of Default has occurred and is continuing (in which case such visits and inspections shall occur as often as any Collateral Agent shall reasonably determine is necessary and shall be at the expense of Borrower), Borrower shall not be obligated to reimburse the Collateral Agents and the Lenders for visits and inspections that occur more frequently than (a) if a Streamline Period is then in effect, once per calendar year, and (b) if a Streamline Period is not then in effect, twice per calendar year. In any Collateral Agent’s sole discretion, the representatives and independent contractors of such Agent and any Lender may conduct additional visits and inspections of the Group Members’ properties more frequently at the Lenders’ expense. The foregoing limitations shall not operate to limit any reimbursement obligations of Borrower under Section 6.11.
6.8 Notices. Give prompt written notice to the Administrative Agent of:

(a) the occurrence of any Default or Event of Default;

(b) any (i) default or event of default under any Contractual Obligation of any Group Member that, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect; and (ii) litigation, investigation or proceeding that may exist at any time between any Group Member and any Governmental Authority that, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect, in each case after a Responsible Officer first has knowledge thereof;

(c) any litigation or proceeding affecting any Group Member (i) in which the amount involved is $100,000 or more and not covered by insurance, (ii) in which injunctive or similar relief is sought against any Group Member, or (iii) which relates to any Loan Document, in each case after a Responsible Officer first has knowledge thereof;

(d) (i) promptly after a Responsible Officer first has knowledge of the occurrence of any of the following events affecting any Loan Party or any of its respective ERISA Affiliates (but in no event more than ten days after such event), the occurrence of any of the following events, and shall provide the Administrative Agent with a copy of any notice with respect to such event that may be required to be filed with a Governmental Authority and any notice delivered by a Governmental Authority to the Borrower or any of its ERISA Affiliates with respect to such event, if such event could reasonably be expected to result in liability in excess of $100,000 of any Loan Party or any of their respective ERISA Affiliates: (A) an ERISA Event, (B) the adoption of any new Pension Plan by the Borrower or any ERISA Affiliate, (C) the adoption of any amendment to a Pension Plan, if such amendment will result in a material increase in benefits or unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), or (D) the commencement of contributions by the Borrower or any ERISA Affiliate to any Pension Plan that is subject to Title IV of ERISA or Section 412 of the Code; and

(ii) upon the reasonable request of the Administrative Agent after the giving, sending or filing thereof, or the receipt thereof, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Loan Party or any of its respective ERISA Affiliates with the IRS with respect to each Pension Plan; and

(iii) promptly after the receipt thereof by any Loan Party or any of its respective ERISA Affiliates, all notices from a Multiemployer Plan sponsor concerning an ERISA Event that could reasonably be expected to result in a liability in excess of $100,000 of any Loan Party or any of its respective ERISA Affiliates;

(e) (i) any issuance by any Group Member of any Capital Stock (other than ordinary course stock options and the stock issued on the exercise thereof by the Borrower to its employees in the ordinary course of business) and (ii) any incurrence by any Group Member of any Indebtedness (other than Indebtedness constituting Loans) in a principal amount equaling or exceeding $100,000;

(f) any material change in accounting policies or financial reporting practices by any Loan Party;
(g) the Borrower’s election to enter into a Streamline Period in accordance with the definition thereof;

(h) the occurrence of a Streamline Termination Date;

(i) any development or event that has had or could reasonably be expected to have a Material Adverse Effect after a Responsible Officer first has knowledge thereof; and

(j) the incurrence of any Qualifying Foreign Subsidiary Indebtedness.

Each notice pursuant to this Section 6.8 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the relevant Group Member proposes to take with respect thereto.

6.9 Environmental Laws.

(a) Comply in all material respects with, and use reasonable commercial efforts to bring about compliance in all respects by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain and comply in all respects with and maintain, and use reasonable commercial efforts to bring about that all tenants and subtenants obtain and comply in all respects with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws.

6.10 Operating Accounts. Maintain the Borrower’s and its Subsidiaries’ primary depository and operating accounts and securities accounts with SVB or with SVB’s Affiliates.

6.11 Audits, Appraisals and Field Examinations. At reasonable times, on reasonable prior notice (provided that no prior notice shall be required if a Default or an Event of Default has occurred and is continuing), each Collateral Agent, or its respective agents, shall have the right to inspect the Collateral, conduct appraisals and field examinations, and the right to audit and copy any and all of any Loan Party’s books and records including ledgers, federal and state tax returns, records regarding assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information. The foregoing inspections, appraisals, field examinations and audits shall be conducted at the Borrower’s expense and Borrower shall be obligated to (a) reimburse each Collateral Agent for the fees or charges paid or incurred by such Collateral Agent if it elects to employ the services of one or more third Persons to perform field examinations or audits or to appraise the Collateral, or any portion thereof, and (b) for each field examination of Borrower or any of its Subsidiaries performed by personnel employed by a Collateral Agent, pay to such Collateral Agent a fee of $850 per day (or such higher amount as shall represent such Agent’s then-current standard charge for the same), per examiner, plus reimburse such Collateral Agent for all out-of-pocket expenses (including travel, meals, and lodging) in connection therewith. The Collateral Agents will use commercially reasonable efforts to provide the Borrower in advance with an estimate of the costs and expenses of each examination and an estimate of the time period for completing such examination; provided, the Collateral Agents’ failure to deliver any such estimates will not relieve the Borrower of its payment obligations under this Agreement. Unless a Default or an Event of Default has occurred and is continuing (in which case such inspections, appraisals, examinations and audits shall occur as often as the Collateral Agents shall reasonably determine is necessary and shall all be at the expense of the Borrower), Borrower shall not be obligated to reimburse the Collateral Agents for (a) if a Streamline Period is then in effect, more than one field examination during any calendar year and more than one appraisal of the
Collateral during any calendar year, and (b) if a Streamline Period is not then in effect, more than two field examinations during any calendar year and more than two appraisals of the Collateral during any calendar year. In the Collateral Agents’ sole discretion, the Collateral Agents may perform additional field examinations and inventory appraisals more frequently at the Lenders’ expense. The foregoing limitations shall not operate to limit any inspection rights of the Collateral Agents or the Lenders under, or reimbursement obligations of Borrower, under Section 6.7.

6.12 Additional Collateral, Etc.

(a) With respect to any property (other than Excluded Assets) acquired after the Closing Date by any Loan Party (other than (x) any property described in paragraph (b), (c), or (d) below, and (y) any property subject to a Lien expressly permitted by Section 7.3(d)) as to which the Administrative Agent, for the ratable benefit of the Secured Parties, does not have a perfected Lien, promptly (and in any event within three (3) Business Days) (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Administrative Agent may reasonably deem necessary or advisable to evidence that such Loan Party is a Guarantor and to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in such property and (ii) take all actions necessary or advisable in the opinion of the Administrative Agent to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a perfected first priority (except as expressly permitted by Section 7.3 and, with respect to priority, subject to the Intercreditor Agreement) security interest and Lien in such property, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent.

(b) With respect to any fee interest in any real property either subject to a mortgage in favor of the Cash Flow Agent or having a value (together with improvements thereof) of at least $1,000,000 acquired after the Closing Date by any Loan Party (other than any such real property subject to a Lien expressly permitted by Section 7.3(g)), promptly, to the extent requested by the Administrative Agent or the Required Lenders, (i) execute and deliver a second priority Mortgage, in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, covering such real property, (ii) if requested by the Administrative Agent, provide the Lenders with (x) title and extended coverage insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably specified by the Administrative Agent) as well as a current ALTA survey thereof, together with a surveyor’s certificate, and (y) any consents or estoppels reasonably deemed necessary or advisable by the Administrative Agent in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent, and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent. In connection with the foregoing, no later than three (3) Business Days prior to the date on which a Mortgage is executed and delivered pursuant to this Section 6.12, in order to comply with the Flood Laws, the Administrative Agent shall have received the following documents: (A) a completed standard “life of loan” flood hazard determination form, (B) if the improvement(s) to the applicable improved real property is located in a special flood hazard area, a notification to the applicable Loan Party (“Loan Party Notice”) and (if applicable) notification to the applicable Loan Party that flood insurance coverage under the National Flood Insurance Program (“NFIP”) is not available because the community does not participate in the NFIP, (C) documentation evidencing the applicable Loan Party’s receipt of the Loan Party Notice (e.g., countersigned Loan Party Notice, return receipt of certified U.S. Mail, or overnight delivery), and (D) if the Loan Party Notice is required to be given and, to the extent flood insurance is required by any applicable Requirement of Law or any Lenders’ written regulatory or compliance procedures and flood insurance is available in the community in which the property is located, a copy of one of the following: the flood insurance policy, the applicable Loan Party’s application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance reasonably satisfactory to the Administrative Agent.
(c) With respect to any new direct or indirect Subsidiary (other than an Excluded Foreign Subsidiary) created or acquired after the Closing Date by any Loan Party (including pursuant to a Permitted Acquisition), promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a perfected second priority security interest and Lien in the Capital Stock of such new Subsidiary that is owned directly or indirectly by such Loan Party, (ii) deliver to the Administrative Agent such documents and instruments as may be reasonably required to grant, perfect, protect and ensure the priority of such security interest, including but not limited to, the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, (iii) cause such new Subsidiary (A) to become a party to the Guarantee and Collateral Agreement, (B) to take such actions as are necessary or advisable in the opinion of the Administrative Agent to grant to the Administrative Agent for the ratable benefit of the Secured Parties a perfected security interest (with respect to priority, subject to the Intercreditor Agreement) and Lien in the Collateral described in the Guarantee and Collateral Agreement, with respect to such Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent and (C) to deliver to the Administrative Agent a certificate of such Subsidiary, in a form reasonably satisfactory to the Administrative Agent, with appropriate insertions and attachments, and (iv) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(d) With respect to any new Excluded Foreign Subsidiary created or acquired after the Closing Date by any Loan Party, promptly (i) execute and deliver to the Administrative Agent such pledge agreements or amendments to the Guarantee and Collateral Agreement, as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a perfected second priority security interest and Lien in the Capital Stock of such new Excluded Foreign Subsidiary that is owned by any such Loan Party (provided that in no event shall (y) more than 66% of the total outstanding voting Capital Stock of any such new Excluded Foreign Subsidiary that is owned by such Loan Party be required to be so pledged and (z) more than 100% of the non-voting Capital Stock of any such Excluded Foreign Subsidiary that is owned by such Loan Party be required to be pledged), (ii) deliver to the Administrative Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, and take such other action as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Administrative Agent’s security interest therein, and (iii) if reasonably requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(e) Each Loan Party shall use commercially reasonable efforts to obtain a landlord’s agreement or bailee letter, as applicable, from the lessor of its headquarters location and from the lessor of or the bailee related to any other location where Collateral is stored or located, which agreement or letter, in any such case, shall contain a waiver or subordination of all Liens or claims that the landlord or bailee may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to the Administrative Agent. With respect to such locations or warehouse space leased or owned as of the Closing Date and thereafter, if the Administrative Agent has not received a landlord’s agreement or bailee letter as of the Closing Date (or, if later, as of the date such location is acquired or leased), the Eligible Inventory at that location shall, in the Collateral Agents’ discretion, be excluded from the Borrowing Base or be subject to such Reserves as may be established by the Collateral Agents in their reasonable credit
judgment. After the Closing Date, no real property or warehouse space shall be leased by any Loan Party and no Inventory shall be shipped to a processor or converter under arrangements established after the Closing Date, without the prior written consent of the Collateral Agents (which consent, in the Collateral Agents’ discretion, may be conditioned upon the exclusion from the Borrowing Base of Inventory at that location or the establishment of Reserves acceptable to the Collateral Agents) or unless and until a reasonably satisfactory landlord agreement or bailee letter, as appropriate, shall first have been obtained with respect to such location. Each Loan Party shall pay and perform its material obligations under all leases and other agreements with respect to each leased location or public warehouse where any Collateral is or may be located.

6.13 [Reserved.]

6.14 Insider Subordinated Indebtedness. Cause any Insider Indebtedness owing by any Loan Party to become Insider Subordinated Indebtedness (a) on or prior to the Closing Date, in respect of any such Insider Indebtedness in existence as of the Closing Date or (b) contemporaneously with the incurrence thereof, in respect of any such Insider Indebtedness incurred at any time after the Closing Date.

6.15 Use of Proceeds. Use the proceeds of each credit extension only for the purposes specified in Section 4.16.

6.16 Designated Senior Indebtedness. Cause the Loan Documents and all of the Obligations to be deemed “Designated Senior Indebtedness” or a similar concept thereto, if applicable, for purposes of any other Indebtedness of the Loan Parties.

6.17 Further Assurances. Execute any further instruments and take such further action as the Administrative Agent reasonably deems necessary to perfect, protect, ensure the priority of or continue the Administrative Agent’s Lien on the Collateral or to effect the purposes of this Agreement.

SECTION 7
NEGATIVE COVENANTS

The Borrower hereby agrees that, at all times prior to the Discharge of Obligations, the Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly:

7.1 Financial Condition Covenants.

(a) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio as at the last day of any period of four consecutive fiscal quarters of the Borrower to be less than 1.10:1.00.

(b) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio as at the last day of any period of four consecutive fiscal quarters of the Borrower ending with any fiscal quarter set forth below to exceed the ratio set forth below opposite such fiscal quarter:

<table>
<thead>
<tr>
<th>Fiscal Quarter Ending</th>
<th>Consolidated Total Leverage Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 30, 2014</td>
<td>3.00:1.00</td>
</tr>
<tr>
<td>September 30, 2014</td>
<td>3.00:1.00</td>
</tr>
<tr>
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<td>3.00:1.00</td>
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<tr>
<td>March 31, 2015</td>
<td>2.75:1.00</td>
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<tr>
<td>June 30, 2015</td>
<td>2.75:1.00</td>
</tr>
<tr>
<td>September 30, 2015</td>
<td>2.75:1.00</td>
</tr>
</tbody>
</table>
(c) **Minimum Liquidity**. Permit Liquidity at any time to be less than $15,000,000.

7.2 **Indebtedness**. Create, issue, incur, assume, become liable in respect of or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party pursuant to any Loan Document;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.2(b);

(c) Indebtedness under the Cash Flow Credit Agreement so long as such Indebtedness remains subject to the Intercreditor Agreement; provided that the aggregate amount of Indebtedness under this clause (c) does not exceed $75,000,000;

(d) Indebtedness with respect to corporate credit cards, merchant services and arrangements, surety bonds and similar obligations incurred in the ordinary course of business;

(e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(f) Indebtedness secured by Liens permitted under Section 7.3(b) and (d);

(g) Permitted Refinancing Indebtedness with respect to Indebtedness permitted under clauses (b) and (f) above;

(h) Indebtedness of a Person (other than a Loan Party or one of their respective Subsidiaries which constituted a Subsidiary prior to the consummation of the applicable merger referenced below) existing at the time such Person is merged with or into a Loan Party or a Subsidiary or becomes a Subsidiary; provided that (i) such Indebtedness was not, in any case, incurred by such other Person in connection with, or in contemplation of, such merger or acquisition, (ii) such merger or acquisition constitutes a Permitted Acquisition, and (iii) with respect to any such Person who becomes a Subsidiary, (A) such Subsidiary is the only obligor in respect of such Indebtedness, and (B) to the extent such Indebtedness is permitted to be secured hereunder, only the assets of such Subsidiary secure such Indebtedness;

(i) Indebtedness in the form of purchase price adjustments, earn-outs, deferred compensation, or other arrangements representing acquisition consideration or deferred payments of a similar nature incurred in connection with any Permitted Acquisition (and, in the case of deferred compensation representing, or in substance representing, consideration or a portion of the purchase price in connection with

<table>
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<th>Fiscal Quarter Ending</th>
<th>Consolidated Total Leverage Ratio</th>
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<tr>
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<td>June 30, 2018</td>
<td>2.00:1.00</td>
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</tbody>
</table>

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such Permitted Acquisitions) or other Investment permitted by Section 7.8 (collectively, “Deferred Payment Obligations”), the amount of which shall be deemed to be the amount required to be accrued as a liability in accordance with GAAP;

(j) Indebtedness consisting of loans permitted by Section 7.8(l) and (m); and

(k) Qualifying Foreign Subsidiary Indebtedness, and Guarantees thereof by the Borrower or any Subsidiary thereof permitted by Section 7.8(n).

7.3 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, whether now owned or hereafter acquired, except:

(a) Liens created pursuant to the Security Documents;

(b) Liens in existence on the date hereof listed on Schedule 7.3(b); provided that (i) no such Lien is spread to cover any additional property after the Closing Date, (ii) the amount of Indebtedness secured or benefitted thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured thereby is permitted by Section 7.2(h);

(c) Liens for taxes, fees, assessments or other government charges or levies, either (i) not yet delinquent or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its books and, with respect to this clause (ii), which do not have priority over the Liens created pursuant to the Security Documents, provided that no notice of any such Lien described in this clause (c) has been filed or recorded under the Code;

(d) purchase money Liens (including Liens under capital leases) securing purchase money obligations owed to a third-party seller on Equipment and related software acquired by the Borrower incurred for financing the acquisition of the Equipment and related software and securing no more than $10,000,000 in the aggregate amount outstanding at any time;

(e) Liens arising from precautionary UCC financing statements filed under any lease permitted by this Agreement;

(f) Liens of carriers, warehousemen, mechanics, landlord, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to goods and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(g) Liens to secure payment of workers’ compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(h) Liens incurred in the extension, renewal or refinancing of the Indebtedness secured by Liens described in clauses (a) through (e), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness may not increase;

(i) leases or subleases of real property granted in the ordinary course of the Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), and leases,
subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of the Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), if the leases, subleases, licenses and sublicenses do not prohibit granting the Administrative Agent, on behalf of the Secured Parties, a Lien therein;

(j) (A) non-exclusive licenses of Intellectual Property granted to third parties by the Borrower or any of its Subsidiaries in the ordinary course of business or pursuant to the Platform Contribution License Agreement, and (B) licenses of Intellectual Property that could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States; provided that any such license pursuant to this clause (j), (x) permits the use by (or license to) the Administrative Agent of the Intellectual Property covered thereby to permit the Administrative Agent, on a royalty free basis, to possess, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, convey, transfer or grant options to purchase, any Collateral, and (y) does not interfere in any material respect with the ordinary conduct of business of any Group Member;

(k) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Section 8.1(h) or (i) of this Agreement;

(l) Liens in favor of other financial institutions arising in connection with the Borrower’s deposit and/or securities accounts held at such institutions solely to the extent incurred in connection with the maintenance of such Deposit Accounts in the ordinary course of business, provided that the Administrative Agent, on behalf of the Secured Parties, has a perfected security interest in the amounts held in such deposit and/or securities accounts pursuant to the terms of a Control Agreement;

(m) Liens arising out of consignment or similar arrangements for the sale of goods entered into by the Borrower or any Subsidiary of the Borrower in the ordinary course of business;

(n) Liens in favor of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importation of goods manufactured for Borrower or its Subsidiaries overseas in the ordinary course of business;

(o) Liens consisting of deposits to secure real property lease obligations as a lessee incurred by the Borrower in the ordinary course of business;

(p) Liens to secure payment of workers’ compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(q) Liens securing Indebtedness permitted under Section 7.2(c) so long as such Liens remain subject to the Intercreditor Agreement;

(r) Liens on assets of any Foreign Subsidiary which secure Indebtedness permitted under Section 7.2(k); provided that no assets or property of any Loan Party are subject to such Liens; and

(s) other Liens securing Indebtedness not exceeding (i) $2,500,000 in the aggregate outstanding at any time prior to the occurrence of one or more equity offerings after the Closing Date, including without limitation a Qualified IPO or primary equity infusion, generating net cash proceeds of at least $100,000,000 on a cumulative basis, and (ii) $5,000,000 in the aggregate outstanding at any time following the occurrence of one or more equity offerings after the Closing Date, including without limitation a Qualified IPO or primary equity infusion, generating net cash proceeds of at least $100,000,000 on a cumulative basis.
7.4 Fundamental Changes. Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that:

(a) any Subsidiary of a Loan Party may be merged or consolidated with or into a Loan Party (provided that such Loan Party shall be the continuing or surviving Person);

(b) any Subsidiary of the Borrower may Dispose of any or all of its assets (i) pursuant to any liquidation or other transaction that results in the assets of such Subsidiary being transferred to the Borrower or any other Loan Party, or (ii) pursuant to a Disposition permitted by Section 7.5; and

(c) any Investment expressly permitted by Section 7.8 (including a Permitted Acquisition) may be structured as a merger, consolidation or amalgamation.

7.5 Disposition of Property. Dispose of any of its property, whether now owned or hereafter acquired, or, in the case of any Subsidiary of the Borrower, issue or sell any shares of such Subsidiary’s Capital Stock to any Person, except:

(a) Dispositions of Equipment that is substantially worn, damaged, or obsolete or no longer used or useful in the ordinary course of business of the Borrower and its Subsidiaries and leases or subleases of real property not useful in the conduct of the business of Borrower and its Subsidiaries;

(b) sales of Inventory to buyers in the ordinary course of business;

(c) Dispositions consisting of non-exclusive licenses of Intellectual Property permitted by Section 7.3(i);

(d) Dispositions of assets by (i) any Subsidiary of the Borrower to the Borrower or another Loan Party and (ii) any Subsidiary of the Borrower which is not a Loan Party to another Subsidiary of the Borrower which is not a Loan Party;

(e) Dispositions of property with an aggregate value not to exceed $500,000 in any fiscal year of the Borrower;

(f) grants of security interests and Liens permitted by this Agreement;

(g) payments permitted under Section 7.6, Investments permitted under Section 7.8, Liens permitted under Section 7.3, payments in the ordinary course of business and other payments which payments (including those in the ordinary course of business), in each case, are not otherwise prohibited by this Agreement or any other Loan Document; and

(h) Dispositions of non-core or surplus assets acquired in a Permitted Acquisition consummated within twelve (12) months of the date of the Permitted Acquisition, so long as the consideration received for the assets to be so disposed is at least equal to the fair market value thereof;

provided, however, that any Disposition made pursuant to this Section 7.5 shall be made in good faith on an arm’s length basis for fair market value (as determined in good faith by the Board of Directors of the Borrower).
7.6 Restricted Payments. Make any payment with respect to any Deferred Payment Obligations, any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, Indebtedness permitted by Section 7.2(c) or any Subordinated Indebtedness, declare or pay any dividend (other than dividends payable solely in common Qualified Stock of the Person making such dividend) on, or make any payment or distribution on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, or otherwise acquire or retire for value, any Capital Stock of any Group Member or other rights to acquire Capital Stock of any Group Member, whether now or hereafter outstanding, or make any other distribution in respect of any Capital Stock of any Group Member, either directly or indirectly, whether in cash or property or in obligations of any Group Member (collectively, “Restricted Payments”), except that, so long as no Default or Event of Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) any Group Member may (i) make Restricted Payments to any Borrower and (ii) declare and make dividends which are payable solely in the common Qualified Stock of such Group Member;

(b) the Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, in each case, other than any conversion into, or exchange for, Disqualified Stock;

(c) the Borrower and its Subsidiaries may make payments in respect of Deferred Payment Obligations consisting of purchase price adjustments in connection with a Permitted Acquisition;

(d) the Borrower and its Subsidiaries may make payments in respect of other Deferred Payment Obligations so long as (i) immediately after giving effect to such payment, the Borrower and its Subsidiaries shall be in compliance with each of the covenants set forth in Section 7.1, based upon financial statements delivered to the Administrative Agent five (5) Business Days prior to the making of such payment, calculated on a Pro Forma Basis, after giving effect to the making of such payment, and (ii) prior to and after giving effect to such payment, the Loan Parties have Liquidity of at least $35,000,000;

(e) the Borrower may make prepayments of Indebtedness permitted by Section 7.2(c) as and to the extent required under the Cash Flow Credit Agreement and permitted under the Intercreditor Agreement; provided that, any mandatory prepayments of such Indebtedness which constitute “Term Loans” (as defined under the Cash Flow Credit Agreement) may not be made with the proceeds of any ABL Priority Collateral (as defined in the Intercreditor Agreement);

(f) after a Qualified IPO, the Borrower may make Restricted Payments in an aggregate amount per annum not exceeding 10% of the net cash proceeds received by the Borrower from such Qualified IPO;

(g) the Borrower may make Restricted Payments to redeem or repurchase in whole or in part any of its Qualified Stock for another class of its Equity Interests or rights to acquire its Qualified Stock or with proceeds from equity contributions or issuances of new Qualified Stock; provided that (A) such Restricted Payments are made substantially concurrently with, or no more than 60 days following, such equity contributions; (B) the net proceeds of such equity contributions or issuance of Qualified Stock do not count toward the cumulative amount referenced in Section 7.8(k)(x) governing Permitted Acquisitions; and (C) the only consideration paid for any such redemption is Equity Interests of the Borrower or the proceeds of such equity contribution or issuance of Qualified Stock;
(h) the Borrower may purchase, redeem or otherwise acquire its Equity Interests for aggregate consideration in any fiscal year not in excess of (i) $5,000,000, prior to the occurrence of one or more equity offerings after the Closing Date, including without limitation a Qualified IPO or primary equity infusion, generating net cash proceeds of at least $100,000,000 on a cumulative basis, and (ii) $10,000,000, following the occurrence of one or more equity offerings after the Closing Date, including without limitation a Qualified IPO or primary equity infusion, generating net cash proceeds of at least $100,000,000 on a cumulative basis; and

(i) other Restricted Payments, on a cumulative basis from and after the Closing Date, in an aggregate amount not to exceed (i) $7,500,000, prior to the occurrence of one or more equity offerings after the Closing Date, including without limitation a Qualified IPO or primary equity infusion, generating net cash proceeds of at least $100,000,000 on a cumulative basis, and (ii) $15,000,000, following the occurrence of one or more equity offerings after the Closing Date, including without limitation a Qualified IPO or primary equity infusion, generating net cash proceeds of at least $100,000,000 on a cumulative basis.

7.7 [Reserved.]

7.8 Investments. Make any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or make any other investment in, any Person (all of the foregoing, “Investments”), except:

(a) Investments (including, without limitation, Subsidiaries) existing on the date hereof listed on Schedule 7.8(a) (but specifically excluding any future Investments in any Subsidiaries unless otherwise permitted hereunder);

(b) (i) Investments consisting of Cash Equivalents and (ii) any Investments permitted by the Borrower’s investment policy, if any, approved by its Board of Directors, as adopted and amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by the Collateral Agents;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of the Borrower;

(d) Investments consisting of deposit and securities accounts in which the Administrative Agent, on behalf of the Secured Parties, has a perfected security interest to the extent required under any Loan Document;

(e) Investments accepted in connection with Dispositions permitted by Section 7.5 of this Agreement;

(f) (i) Investments by Subsidiaries of the Borrower that are not Loan Parties in other Subsidiaries of the Borrower or in the Borrower, and (ii) other investments by Borrower and its Subsidiaries so long as the aggregate amount of all such Investments made in reliance on this clause (ii) in any fiscal year of Borrower does not exceed $500,000;

(g) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business and in an aggregate outstanding amount not to exceed $500,000 at any one time, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of the Borrower or any of its Subsidiaries pursuant to employee stock purchase plans or agreements approved by the Borrower’s Board of Directors so long as the proceeds of such loans are used in their entirety to purchase such Capital Stock in Borrower;
(h) Investments (including Indebtedness obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers which settlements are effected in the ordinary course of business;

(i) loans by the Borrower in favor of manufacturers and suppliers in an aggregate amount outstanding not to exceed $250,000 at any time;

(j) (i) Investments constituting Permitted Acquisitions, and (ii) Investments held by any Person as of the date such Person is acquired in connection with a Permitted Acquisition, provided that (A) such Investments were not made, in any case, by such Person in connection with, or in contemplation of, such Permitted Acquisition, and (B) with respect to any such Person which becomes a Subsidiary as a result of such Permitted Acquisition, such Subsidiary remains the only holder of such Investment; and

(k) purchases or other acquisitions by any Group Member of the Capital Stock in a Person that, upon the consummation thereof, will be a Subsidiary (including as a result of a merger or consolidation) or all or substantially all of the assets of, or assets constituting one or more business units of, any Person (each, a “Permitted Acquisition”); provided that, with respect to each such purchase or other acquisition:

(i) the newly-created or acquired Subsidiary (or assets acquired in connection with an asset sale) shall be (x) in the same or a related line of business as that conducted by the Borrower on the date hereof, or (y) in a business that is ancillary to and in furtherance of the line of business as that conducted by the Borrower on the date hereof;

(ii) all transactions related to such purchase or acquisition shall be consummated in all material respects in accordance with all Requirements of Law;

(iii) no Loan Party shall, as a result of or in connection with any such purchase or acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, tax, litigation or other matters) that, as of the date of such purchase or acquisition, could be expected to result in the existence or incurrence of a Material Adverse Effect, as determined by the Board of Directors of the Borrower in good faith;

(iv) the Borrower shall give the Administrative Agent at least ten (10) Business Days’ prior written notice of any such purchase or acquisition; the Borrower shall provide to the Administrative Agent as soon as available but in any event not later than five (5) Business Days after the execution thereof, a copy of any executed purchase agreement or similar agreement with respect to any such purchase or acquisition;

(v) any such newly-created or acquired Subsidiary, or the Loan Party that is the acquirer of assets in connection with an asset acquisition, shall comply with the requirements of Section 6.12, except to the extent compliance with Section 6.12 is prohibited by pre-existing Contractual Obligations or Requirements of Law binding on such Subsidiary or its properties;

(vi) (x) immediately before and immediately after giving effect to any such purchase or other acquisition, no Default or Event of Default shall have occurred and be continuing. (y) immediately after giving effect to such purchase or other acquisition, the Borrower and its Subsidiaries shall have a Consolidated Leverage Ratio of less than 2.50:1.00 and be in compliance with each of the covenants.
set forth in Section 7.1, based upon financial statements delivered to the Administrative Agent which give effect, on a Pro Forma Basis (including with respect to Consolidated EBITDA), to such acquisition or other purchase and (z) immediately before and immediately after giving effect to any such purchase or other acquisition, the Loan Parties shall have Liquidity in an amount equal to or greater than $35,000,000;

(vii) the Borrower shall not, as determined by the Board of Directors of the Borrower in good faith as of the date any such acquisition or other purchase is consummated, expect such acquisition or other purchase to result in a Default of an Event of Default under Section 8.1(c);

(viii) no Indebtedness is assumed or incurred in connection with any such purchase or acquisition other than Indebtedness permitted by the terms of Sections 7.2(h) and (i);

(ix) such purchase or acquisition shall not constitute an Unfriendly Acquisition;

(x) prior to the occurrence of one or more equity offerings after the Closing Date, including without limitation a Qualified IPO or primary equity infusion, generating net cash proceeds of at least $100,000,000 on a cumulative basis, the amount of the cash consideration (including any Deferred Payment Obligations the amount of which shall be determined as set forth in Section 7.2(i), but excluding cash proceeds of the sale of Capital Stock (other than Disqualified Stock) substantially concurrently with, or during the 30 days prior to, the consummation of such acquisition or other purchase)) paid by the Group Members in connection with (1) each such Permitted Acquisition shall not exceed $25,000,000 and (2) all such Permitted Acquisitions consummated from and after the Closing Date shall not exceed $75,000,000 in the aggregate during the term of this Agreement;

(xi) other than acquisitions the aggregate amount of cash consideration (including any Deferred Payment Obligations) for all such acquisitions does not exceed $25,000,000, each such Permitted Acquisition is of a Person organized under the laws of the United States and engaged in business activities primarily conducted within the United States or of assets located in the United States (other than immaterial assets); and

(xii) the Borrower shall have delivered to the Administrative Agent, at least five Business Days prior to the date on which any such purchase or other acquisition is to be consummated (or such later date as is agreed by the Administrative Agent in its sole discretion), a certificate of a Responsible Officer of the Borrower, in form and substance reasonably satisfactory to the Administrative Agent, certifying that all of the requirements set forth in this definition have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition;

(I) Investments in Foreign Subsidiaries to the extent that the proceeds thereof are paid (by such Foreign Subsidiary or by another Subsidiary to or in whom such Foreign Subsidiary lends or invests such proceeds) to a Loan Party to license Intellectual Property of the Borrower or one or more Subsidiaries thereof, or to otherwise pay consideration or royalties to a Loan Party for rights to such Intellectual Property, in connection with transactions permitted by Section 7.3(j) (including payments pursuant to the Platform Contribution License Agreement);

(m) Investments in Foreign Subsidiaries to fund the establishment of, or expansion of, operations, or to fund working capital, in foreign jurisdictions in an amount outstanding at any time (net of repayments or returns thereof or thereon) not to exceed (1) $25,000,000, prior to the occurrence of one or more equity offerings after the Closing Date, including without limitation a Qualified IPO or primary equity infusion, generating net cash proceeds of at least $100,000,000 on a cumulative basis, and (2) the greater of (i) $35,000,000 and (ii) 10% of Consolidated Total Assets, following the occurrence of one or more equity offerings after the Closing Date, including without limitation a Qualified IPO or primary equity infusion,
generating net cash proceeds of at least $100,000,000 on a cumulative basis; provided that at any time prior to the payment in full of all amounts due to the Borrower pursuant to the Platform Contribution License Agreement, the aggregate amount of cash and Cash Equivalents held by such Foreign Subsidiaries shall not exceed $10,000,000 for any period of 10 consecutive Business Days; and

(n) Guarantees of Qualifying Foreign Subsidiary Indebtedness by the Borrower or any of its Subsidiaries; provided that any such Guarantee provided by the Borrower or any other Loan Party is unsecured and subordinated to the Obligations on terms and conditions reasonably satisfactory to the Collateral Agents.

7.9 ERISA. The Borrower shall not, and shall not permit any of its ERISA Affiliates to: (a) terminate any Pension Plan so as to result in any material liability to such Person or any of such Person’s ERISA Affiliates, (b) permit to exist any ERISA Event, or any other event or condition, which presents the risk of a material liability to any of their respective ERISA Affiliates, (c) make a complete or partial withdrawal (within the meaning of ERISA Section 4201) from any Multiemployer Plan so as to result in any material liability to such Person or any of their respective ERISA Affiliates, (d) enter into any new Pension Plan or modify any existing Pension Plan so as to increase its obligations thereunder which could result in any material liability to any such Person or any of its respective ERISA Affiliates, (e) permit the present value of all nonforfeitable accrued benefits under any Pension Plan (using the actuarial assumptions utilized by the PBGC upon termination of a Pension Plan) materially to exceed the fair market value of Pension Plan assets allocable to such benefits, all determined as of the most recent valuation date for each such Pension Plan, or (f) engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by the Administrative Agent or any Lender of any of its rights under this Agreement, any Note or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Code.

7.10 Optional Payments and Modifications of Preferred Stock and Debt Instruments. (a) Amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of the Preferred Stock, if any, (i) that would move to an earlier date the scheduled redemption date or increase the amount of any scheduled redemption payment or increase the rate or move to an earlier date any date for payment of dividends thereon or (ii) that would be otherwise materially adverse to any Lender or any other Secured Party; or (b) amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, (i) any of the terms of any Indebtedness permitted by Section 7.2 (other than Indebtedness pursuant to any Loan Document or permitted by Section 7.2(c)) that would shorten the maturity or increase the amount of any payment of principal thereof or the rate of interest thereon or shorten any date for payment of interest thereon or that would be otherwise materially adverse to any Lender or any other Secured Party or that would violate any subordination terms or any subordination agreement applicable thereto, and (ii) any of the terms of Indebtedness permitted by Section 7.2(c) other than to the extent permitted by the Intercreditor Agreement.

7.11 Transactions with Affiliates. Enter into any transaction, including any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than any other Loan Party) except for any transaction (other than the payment of management, consulting, monitoring, advisory or similar fees) that (i) is otherwise permitted under this Agreement, (ii) is in the ordinary course of business of the relevant Group Member (or is permitted by Section 7.8(l) or (m) or, in connection with the Platform Contribution License Agreement, Section 7.3(j)), (iii) is upon fair and reasonable terms no less favorable to the relevant Group Member than it would obtain in a comparable arm’s length transaction with a Person that is not an Affiliate (e.g., cost-plus service agreements in the ordinary course of business between Affiliates), (iv) both before and after giving pro forma effect to such transaction, no Default or Event of Default has occurred and is continuing or would result therefrom, and (v) so long as such transactions are fully disclosed to the Collateral Agents prior to the consummation thereof if they involve one or more payments by the Loan Parties in excess of $1,000,000 for any single transaction or series of related transactions.
7.12 Sale Leaseback Transactions. Enter into any Sale Leaseback Transaction unless (a) the Disposition of the applicable property subject to such Sale Leaseback Transaction is permitted under Section 7.5, and (b) any Liens in the property of any Loan Party incurred in connection with any such Sale Leaseback Transaction are permitted under Section 7.3.

7.13 Swap Agreements. Enter into any Swap Agreement, except (a) Specified Swap Agreements or (b) other unsecured Swap Agreements, in each case, which are entered into by a Group Member to (i) hedge or mitigate risks to which such Group Member has actual exposure (other than those in respect of Capital Stock), or (ii) effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of such Group Member.

7.14 Accounting Changes. Make any change in its (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year.

7.15 Negative Pledge Clauses. Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, to secure its Obligations under the Loan Documents to which it is a party, other than (a) this Agreement and the other Loan Documents, (b) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby), and (c) customary restrictions on the assignment of leases, licenses and other agreements.

7.16 Clauses Restricting Subsidiary Distributions. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Loan Party and any of their respective Subsidiaries to (a) make Restricted Payments in respect of any Capital Stock of such Subsidiary held by, or to pay any Indebtedness owed to, any other Group Member or (b) make loans or advances to, or other Investments in, any other Group Member, or (c) transfer any of its assets to any other Group Member, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with a Disposition permitted hereby of all or substantially all of the Capital Stock or assets of such Subsidiary, (iii) customary restrictions on the assignment of leases, licenses and other agreements, or (iv) restrictions of the nature referred to in clause (c) above under agreements governing purchase money liens or Capital Lease Obligations otherwise permitted hereby which restrictions are only effective against the assets financed thereby.

7.17 Lines of Business. Enter into any business, either directly or through any Subsidiary, except for those businesses in which the Borrower and its Subsidiaries are engaged on the date of this Agreement or that are reasonably related, ancillary or incidental thereto.

7.18 Designation of other Indebtedness. Designate any Indebtedness or indebtedness other than the Obligations as “Designated Senior Indebtedness” or a similar concept thereto, if applicable.

7.19 Certification of Certain Equity Interests. Take any action to certificate any Equity Interests having been pledged to the Administrative Agent (for the ratable benefit of the Secured Parties) which were uncertificated at the time so pledged, in any such case, without first obtaining the Administrative Agent’s prior written consent to do so and undertaking to the reasonable satisfaction of the Administrative Agent all such actions as may reasonably be requested by the Administrative Agent to continue the perfection of its Liens (held for the ratable benefit of the Secured Parties) in any such newly certificated Equity Interests.
7.20 Amendments to Organizational Agreements and Material Contracts. (a) Amend or permit any amendments to any Loan Party’s organizational documents if any such amendment would be adverse to the Administrative Agent or the Lenders in any material respect; or (b) amend or permit any amendments to, or terminate or waive any provision of, any material Contractual Obligation if such amendment, termination, or waiver would be adverse to the Administrative Agent or the Lenders in any material respect.

7.21 Use of Proceeds. Use the proceeds of any extension of credit hereunder, whether directly or indirectly, and whether immediately, incidentally or ultimately, to (a) purchase or carry margin stock (within the meaning of Regulation U) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, Regulation U or Regulation X or (b) finance an Unfriendly Acquisition.

7.22 Subordinated Debt.

(a) Amendments. Amend, modify, supplement, waive compliance with, or consent to noncompliance with, any Subordinated Debt Document, unless the amendment, modification, supplement, waiver or consent (i) does not adversely affect the Loan Parties’ ability to pay and perform each of their respective Obligations at the time and in the manner set forth herein and in the other Loan Documents and is not otherwise adverse to the Administrative Agent and the Lenders, and (ii) is in compliance with the subordination provisions therein and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders.

(b) Payments. Make any voluntary or optional payment, prepayment or repayment on, redemption, exchange or acquisition for value of, or any sinking fund or similar payment with respect to, any Subordinated Indebtedness, except as permitted by the subordination provisions in the applicable Subordinated Debt Documents and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders.

7.23 [Reserved.]

7.24 Anti-Terrorism Laws; OFAC; Anti-Corruption.

(a) Conduct, deal in or engage in or permit any Affiliate or agent of the Borrower within its control to conduct, deal in or engage in any of the following activities: (a) conduct any business or engage in any transaction or dealing with any person blocked pursuant to Executive Order No. 13224 (“Blocked Person”), including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person; (b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or the Patriot Act. The Borrower shall deliver to the Administrative Agent and the Lenders any certification or other evidence reasonably requested from time to time by the Administrative Agent or any Lender confirming the Borrower’s compliance with this Section 7.24.
(b) Use the proceeds of any Loan made hereunder to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity or in any other manner that will result in any violation or breach by any Person of OFAC.

(c) Use any part of the proceeds of any Loan, directly or indirectly, for any payment to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

7.25 Certain Deposit Accounts. Maintain cash, Cash Equivalents, or other amounts, in each case, that are credited to foreign deposit accounts or foreign securities accounts (or, as to any Subsidiary that is not a Loan Party, maintain cash or Cash Equivalents or any amounts credited to any deposit accounts or securities accounts), taken as a whole, in an aggregate amount in excess of the amount specified in the proviso in Section 7.8(m).

SECTION 8
EVENTS OF DEFAULT

8.1 Events of Default. The occurrence of any of the following shall constitute an Event of Default:

(a) the Borrower shall fail to pay:

(i) any amount of principal of any Loan when due in accordance with the terms hereof (including Section 2.8); or

(ii) the Borrower shall fail to pay any amount of interest on any Loan, or any other amount payable hereunder or under any other Loan Document (other than principal of any Loan as provided in clause (i) above), within three (3) Business Days after any such interest or other amount becomes due in accordance with the terms hereof; or

(b) any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document (i) if qualified by materiality, shall be incorrect or misleading when made or deemed made, or (ii) if not qualified by materiality, shall be incorrect or misleading in any material respect when made or deemed made; or

(c) (i) any Loan Party shall default in the observance or performance of any agreement contained in Section 2.8, Section 5.3, Section 6.1, Section 6.2, Section 6.3(c), clause (i) or (ii) of Section 6.5(a), Section 6.6(b), Section 6.7, Section 6.8, Section 6.10, Section 6.11, Section 6.12, Section 6.16 or Section 7 of this Agreement or (ii) an “Event of Default” under and as defined in any Security Document shall have occurred and be continuing; or

(d) any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document to which it is party (other than as provided in paragraphs (a), through (c) of this Section), and such default shall continue unremedied for a period of 30 days thereafter; or

(e) (1) any Group Member shall (i) default in making any payment of any principal of any Indebtedness (including any Guarantee Obligation, but excluding the Loans) on the scheduled or original due date with respect thereto; or (ii) default in making any payment of any interest, fees, costs or expenses on
any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; (iii) default in making any payment or delivery under any such Indebtedness constituting a Swap Agreement beyond the period of grace, if any, provided in such Swap Agreement; or (iv) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to (x) cause, or to permit the holder or beneficiary of, or, in the case of any such Indebtedness constituting a Swap Agreement, counterparty under, such Indebtedness (or a trustee or agent on behalf of such holder, beneficiary, or counterparty) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable or (in the case of any such Indebtedness constituting a Swap Agreement) to be terminated, or (y) to cause, with the giving of notice if required, any Group Member to purchase or redeem or make an offer to purchase or redeem such Indebtedness prior to its stated maturity; provided that, unless such Indebtedness constitutes a Specified Swap Agreement, a default, event or condition described in clause (i), (ii), (iii), or (iv) of this paragraph (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (i), (ii), (iii), and (iv) of this paragraph (e) shall have occurred with respect to Indebtedness the outstanding principal amount (and, in the case of Swap Agreements, other than Specified Swap Agreements, the Swap Termination Value) of which, individually or in the aggregate of all such Indebtedness, exceeds in the aggregate $100,000; or (2) any default or event of default (however designated) shall occur with respect to any Subordinated Indebtedness of any Group Member; or

(f) (i) any Group Member shall commence any case, proceeding or other action (a) under any Debtor Relief Law seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (b) seeking appointment of a receiver, trustee, custodian, conservator, judicial manager or other similar official for it or for all or any substantial part of its assets, or any Group Member shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against any Group Member any case, proceeding or other action of a nature referred to in clause (i) above that (a) results in the entry of an order for relief or any such adjudication or appointment, or (b) remains undismissed, undischarged or unbonded for a period of 45 days (provided that, during such 45-day period, no Loans shall be advanced or Letters of Credit issued hereunder); or (iii) there shall be commenced against any Group Member any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 45 days from the entry thereof (provided that, during such 45-day period, no Loans shall be advanced or Letters of Credit issued hereunder); or (iv) any Group Member shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) any Group Member shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) There shall occur one or more ERISA Events which individually or in the aggregate results in or otherwise is associated with liability of any Loan Party or any ERISA Affiliate thereof in excess of $100,000 during the term of this Agreement; or there exists an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities) which exceeds $100,000; or

(h) There is entered against any Group Member (i) one or more judgments or orders for the payment of money or fines or penalties issued by any Governmental Authority involving in the aggregate a liability (not paid or fully covered by insurance as to which the relevant insurance company has
acknowledged coverage) of $500,000 or more, or (ii) one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case (i) or (ii), (A) enforcement proceedings are commenced by any creditor or any such Governmental Authority, as applicable, upon such judgment, order, penalty or fine, as applicable, or (B) such judgment, order, penalty or fine, as applicable, shall not have been vacated, discharged, stayed or bonded, as applicable, pending appeal within 10 Business Days from the entry or issuance thereof; or

(i) any of the Security Documents shall cease, for any reason other than as the result of action or omission by any Agent or any Lender, to be in full force and effect (other than pursuant to the terms thereof), or any Loan Party shall so assert, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby; or

(j) there shall be commenced against any Loan Party any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged or stayed or bonded pending appeal within 10 Business Days from the entry thereof; or

(k) any court order enjoins, restrains or prevents a Loan Party from conducting all or any material part of its business; or

(l) the guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason other than as the result of action or omission by any Agent or any Lender, to be in full force and effect or any Loan Party shall so assert; or

(m) a Change of Control shall occur; or

(n) [reserved]; or

(o) any of the Governmental Approvals shall have been (i) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (ii) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of the Governmental Approvals or that could reasonably be expected to result in the Governmental Authority taking any of the actions described in clause (i) above, and such decision or such revocation, rescission, suspension, modification or nonrenewal (A) has, or could reasonably be expected to have, a Material Adverse Effect, or (B) materially adversely affects the legal qualifications of any Group Member to hold any material Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or nonrenewal could reasonably be expected to materially adversely affect the status of or legal qualifications of any Group Member to hold any material Governmental Approval in any other jurisdiction; or

(p) Any Loan Document not otherwise referenced in Section 8.1(i) or (j), at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or the Discharge of Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or any further liability or obligation under any Loan Document to which it is a party, or purports to revoke, terminate or rescind any such Loan Document; or

(q) a Material Adverse Effect shall occur; or

(r) any “Default”, “Event of Default”, or similar concept thereto (if applicable), under any Subordinated Indebtedness shall have occurred.
8.2 Remedies upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) if such event is an Event of Default specified in clause (i) or (ii) of paragraph (f) of Section 8.1 with respect to the Borrower, the Revolving Commitments shall immediately terminate automatically and the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents shall automatically immediately become due and payable, and

(b) if such event is any other Event of Default, any of the following actions may be taken: (i) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders (or SunTrust, in its capacity as a Collateral Agent, as provided in Section 9.13), the Administrative Agent shall, by notice to the Borrower declare the Revolving Commitments, the Swingline Commitments and the L/C Commitments to be terminated forthwith, whereupon the Revolving Commitments, the Swingline Commitments and the L/C Commitments shall immediately terminate; (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable; (iii) any Bank Services Provider or any other Qualified Counterparty, as applicable, may terminate any Specified Swap Agreement, any foreign exchange service agreements, or any other Bank Services Agreement then outstanding; and (iv) exercise on behalf of itself, the Lenders and the Issuing Lender all rights and remedies available to it, the Lenders and the Issuing Lender under the Loan Documents, at law, or in equity.

With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrower shall Cash Collateralize an amount equal to 105% of the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts so Cash Collateralized shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations of the Borrower hereunder and under the other Loan Documents in accordance with Section 8.3. In addition, (x) the Borrower shall also Cash Collateralize the full amount of any Swingline Loans then outstanding, and (y) to the extent elected by Bank Services Provider or provider of any Specified Swap Agreement, the Borrower shall also Cash Collateralize the amount of any Obligations in respect of Bank Services then outstanding. After all such Letters of Credit and Bank Services Agreements shall have been terminated, expired or fully drawn upon, as applicable, and all amounts drawn under any such Letters of Credit shall have been reimbursed in full and all other Obligations of the Borrower and the other Loan Parties (including any such Obligations arising in connection with Bank Services) shall have been paid in full, the balance, if any, of the funds having been so Cash Collateralized, if any, shall be applied to repay other Obligations of the Borrower hereunder and under the other Loan Documents in accordance with Section 8.3. Except as expressly provided above in this Section, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrower.

8.3 Application of Funds. After the occurrence of an Application Event or the exercise of remedies provided for in Section 8.2, any amounts received by the Administrative Agent on account of the Obligations (whether payments or proceeds of Collateral) shall be applied by the Administrative Agent in the following order:

First, to the payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest but including any Collateral-Related Expenses, fees, charges and disbursements of counsel to any Agent and amounts payable under Sections 2.19, 2.20 and 2.21) payable to any Agent in its capacity as such (including interest thereon);
Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders or the Issuing Lender (including any Letter of Credit Fronting Fees, Issuing Lender Fees and the reasonable fees, charges and disbursements of counsel to the respective Lenders and the Issuing Lender and amounts payable under Sections 2.19, 2.20 and 2.21), in each case, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans and L/C Disbursements which have not yet been converted into Revolving Loans, in each case, ratably among the Lenders and the Issuing Lender, in each case, ratably among them in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Disbursements which have not yet been converted into Revolving Loans, in each case, ratably among the Lenders and the Issuing Lender, in each case, ratably among them in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to the Administrative Agent for the account of the Issuing Lender, to Cash Collateralize that portion of the L/C Exposure comprised of the aggregate undrawn amount of Letters of Credit pursuant to Section 3.10;

Sixth, to the Administrative Agent for the account of each Bank Services Provider, to Cash Collateralize then-outstanding Obligations arising in connection with Bank Services;

Seventh, to the payment of all other Obligations of the Loan Parties that are then due and payable to the Administrative Agent and the other Secured Parties on such date, in each case, ratably among them in proportion to the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date;

Eighth, for the account of any applicable Qualified Counterparty, to Cash Collateralize Obligations arising under any then outstanding Specified Swap Agreements, in each case, ratably among them in proportion to the respective amounts described in this clause Eighth payable to them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full (excluding, for this purpose, any Obligations which have been Cash Collateralized in accordance with the terms hereof), to the Borrower or as otherwise required by Law.

Subject to Sections 2.24(a), 3.4, 3.5 and 3.10, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral (whether for Letters of Credit after all Letters of Credit have either been fully drawn or expired, or for Obligations in respect of any Bank Services after all such Bank Services have been terminated, or for Obligations in respect of any Specified Swap Agreements after all such agreements have been terminated), such remaining amount shall be applied to the other Obligations, if any, in the order set forth above, and, if any amount then remains on deposit, it shall be promptly distributed to the Borrower.
SECTION 9
THE AGENTS

9.1 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints SVB to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

(b) The provisions of Section 9 are solely for the benefit of the Agents, the Lenders and the Issuing Lender, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Agent shall have any duties or responsibilities to any Lender or any other Person, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against any Agent. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent or any other Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(c) The Administrative Agent shall also act as the collateral agent under the Loan Documents, and each Collateral Agent, the Issuing Lender and each of the other Lenders (in their respective capacities as a Lender and, as applicable, Qualified Counterparty or Bank Services Provider) hereby irrevocably (i) authorize the Administrative Agent to enter into all other Loan Documents, as applicable, including the Guarantee and Collateral Agreement, any subordination agreements and any other Security Documents, and (ii) appoint and authorize the Administrative Agent to act as the agent of the Secured Parties for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. The Administrative Agent, as collateral agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.2 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Section 9 and Section 10 (including Section 9.7, as though such co-agents, sub-agents and attorneys-in-fact were the collateral agent under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Administrative Agent is further authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action, or permit the any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent to take any action, with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the Liens upon any Collateral granted pursuant to any Loan Document.

9.2 Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities provided for herein as well as activities as an Agent. No Agent shall be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub agents.
9.3 Exculpatory Provisions. The Agents shall have no duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Agents shall not:

(a) be subject to any fiduciary or other implied duties, regardless of whether any Default or any Event of Default has occurred and is continuing;

(b) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that any Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), as applicable; provided that no Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and the Agents shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as an Agent or any of its Affiliates in any capacity.

The Agents shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as any such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.2 and 10.1), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment.

The Agents shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 5.1, Section 5.2 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent.

9.4 Reliance by Agents. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, each Agent may presume that such condition is satisfactory to such Lender unless such Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Agents may
consult with legal counsel (who may be counsel for any of the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. Each Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with such Agent. Each Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents), and such request and any action taken or failure to act pursuant thereto shall be binding upon the Lenders and all future holders of the Loans.

9.5 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received notice in writing from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action or refrain from taking such action with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

9.6 Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that no Agent nor any of its officers, directors, employees, agents, attorneys in fact or affiliates has made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of a Group Member or any affiliate of a Group Member, shall be deemed to constitute any representation or warranty by any Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon any Agent or any other Lender or any of their Related Parties, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Group Members and their affiliates and made its own credit analysis and decision to make its Loans hereunder and enter into this Agreement. Each Lender also agrees that it will, independently and without reliance upon any Agent or any other Lender or any of their Related Parties, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, the other Loan Documents or any related agreement or any document furnished hereunder or thereunder, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Group Members and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent hereunder, no Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Group Member or any Affiliate of a Group Member that may come into the possession of any Agent or any of its officers, directors, employees, agents, attorneys in fact or affiliates.

9.7 Indemnification. Each of the Lenders agrees to indemnify each of the Agents, the Issuing Lender and the Swingline Lender and each of its Related Parties in its capacity as such (to the extent not reimbursed by the Borrower or any other Loan Party pursuant to any Loan Document and without limiting the
obligation of the Borrower or any other Loan Party to do so) according to its Aggregate Exposure Percentage in effect on the date on which indemnification is sought under this Section 9.7 (or, if indemnification is sought after the date upon which the Revolving Commitments shall have terminated and the Loans shall have been paid in full, in accordance with its Aggregate Exposure Percentage immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against any Agent or such other Person in any way relating to or arising out of, the Revolving Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by any Agent or such other Person under or in connection with any of the foregoing and any other amounts not reimbursed by the Borrower or such other Loan Party; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted primarily from such Agent’s or such other Person’s gross negligence or willful misconduct, and that with respect to such unpaid amounts owed to the Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders’ Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought). The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

9.8 Agent in Its Individual Capacity. Any Person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as an Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders.

9.9 Successor Agents.

(a) The Administrative Agent and any Collateral Agent may at any time give notice of its resignation to the Lenders and the Borrower. If no such successor Administrative Agent or Collateral Agent shall have so been appointed by the Required Lenders and shall have accepted such appointment within 30 days after the applicable retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent or Collateral Agent shall be discharged from its
duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Secured Parties under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed and such collateral security is assigned to such successor Administrative Agent) and (ii) except for any indemnity payments owed to the retiring or removed Agent, all payments, communications and determinations provided to be made by, to or through the applicable Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent or Collateral Agent as provided for above in this Section. Upon the acceptance of a successor’s appointment as Administrative Agent or Collateral Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Agent (other than any rights to indemnity payments owed to the retiring or removed Agent), and the retiring or removed Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of Section 9 and Section 10.5 shall continue in effect for the benefit of such retiring or removed Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Agent was acting as the Administrative Agent or the Collateral Agent (as applicable).

9.10 Collateral and Guaranty Matters. The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any Collateral or other property granted to or held by the Administrative Agent under any Loan Document (i) upon the Discharge of Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, Bank Services and Specified Swap Agreements (other than Letters of Credit, Bank Services and Specified Swap Agreements the Obligations in respect of which have been Cash Collateralized in an amount equal to 105% thereof in accordance with the terms hereof or, with respect to Bank Services or Specified Swap Agreements, as to which other arrangements satisfactory to the Administrative Agent, Bank Services Provider and applicable Qualified Counterparty, as applicable, shall have been made), (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, or (iii) subject to Section 10.1, if approved, authorized or ratified in writing by the Required Lenders or such other threshold of requisite threshold of Lenders required under Section 10.1;

(b) [reserved]; and

(c) to release any Guarantor from its obligations under the Guarantee and Collateral Agreement if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

(d) Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent’s authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10.

(e) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent’s Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.
9.11 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation in respect of any Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Obligations in respect of any Letter of Credit and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.9 and 10.5) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.9 and 10.5.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

9.12 No Other Duties, Etc.

(a) Anything herein to the contrary notwithstanding, no Collateral Agent shall have any duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender, the Issuing Lender or the Swingline Lender hereunder or any powers except for those specifically provided to it hereunder as to the Collateral Agent in its capacity, as applicable, as the Administrative Agent, a Lender, the Issuing Lender or the Swingline Lender hereunder. Without limiting the foregoing, each of the Collateral Agents, in such capacities, shall not have or be deemed to have any fiduciary relationship with any Lender or any Loan Party. Each Lender, Agent, Lender, Issuing Lender, and each Loan Party acknowledges that it has not relied, and will not rely, on the Collateral Agents in deciding to enter into this Agreement or in taking or not taking action hereunder. Each of the Collateral Agents, in such capacities, shall be entitled to resign at any time by giving notice to the other Agents and Borrower.

(b) Anything herein to the contrary notwithstanding, none of the “Arrangers” or “Syndication Agents” shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender, the Issuing Lender or the Swingline Lender hereunder.

Each of SVB and SunTrust is hereby approved to serve as a Collateral Agent under the Loan Documents.

(a) Notwithstanding anything in this Agreement or any other Loan Document to the contrary but subject to subsection 9.13(e) below, each of the Collateral Agents, shall have rights as expansive as the rights afforded to Administrative Agent under this Agreement or any other Loan Document relating to (i) (x) the definition in this Agreement of the term “Available Revolving Commitment” and any component of such definition, and (y) the definition in this Agreement of the term “Borrowing Base” and any component of such definition (including Reserves, Eligible Accounts, Eligible Inventory, Eligible In-Transit Inventory, advance rates, appraised values and eligibility criteria), (ii) reporting requirements related to the Collateral and Collateral appraisals, examinations and audits, (iii) the establishment, determination, modification or release of any of the Reserves established pursuant to this Agreement, (iv) intercreditor arrangements, (v) information requests related to the Collateral and Collateral verification, (vi) the inclusion of additional assets in the Borrowing Base (vii) Borrowing Base eligibility standards, (viii) access rights, (ix) the ability to increase appraisal frequency, (x) perfection notices or requests under the Loan Documents, and (xi) the ability to perform/witness field examinations, appraisals, inspections and audits. Upon the occurrence and during the continuation of any Event of Default, SunTrust, in its capacity as a Collateral Agent, and without the necessity of consent of the Required Lenders, is authorized to direct the Administrative Agent to exercise remedies pursuant to Section 8.2. The foregoing to the contrary notwithstanding, SunTrust shall have no obligation to direct the Administrative Agent to take any such actions.

(b) Any provision in this Agreement or any other Loan Document relating to any of the matters covered by subsection 9.13(a) (collectively, “Collateral Issues”) which would otherwise only require the consent or approval of or be required to be reasonably satisfactory or reasonably acceptable to Administrative Agent or any Agent shall be deemed to require the consent or approval of or be reasonably satisfactory or reasonably acceptable (as the case may be) to each of the Collateral Agents (subject to any limitations or qualifications on the consent, approval, satisfaction or acceptance right of Administrative Agent or any Agent set forth in the Loan Documents with respect thereto (including any requirement that requires such consent, approval, satisfaction or acceptance right to be exercised “reasonably”, in its “reasonable credit judgment” or in its “reasonable discretion”).

(c) If any provision in this Agreement or any other Loan Document relating to a Collateral Issue allows Administrative Agent to request that any action be taken or any documents or other information be provided by or on behalf of any Loan Party, Administrative Agent shall make any such request that any of the Collateral Agents may request and shall provide such Collateral Agent with any such documents or information so requested after the receipt thereof by Administrative Agent.

(d) If Agent or a Collateral Agent makes any proposal with respect to a matter described in the following sentence, the other Collateral Agent and Administrative Agent shall respond to such proposal within five (5) Business Days. In the event of any action that requires the approval of the Agents or the Collateral Agents (including solely by operation of this Section 9.13), in the event that SunTrust Bank, in its capacity as Collateral Agent, and SVB, in its capacity as Collateral Agent and/or Administrative Agent cannot, in good faith, reasonably promptly agree on any Collateral Issue, including any issue relating to the Borrowing Base, Availability, Borrowing Base eligibility standards or calculations, Borrowing Base advance rates, Borrowing Base reporting, Reserves, Collateral appraisals or examinations, intercreditor arrangements or any other interpretation, action or determination relating to a Collateral Issue which issue is subject to the determination of Administrative Agent, the Agents, the Collateral Agents, or any Agent, or to the consent, approval, satisfaction or acceptance of Administrative Agent, any Agent, the Collateral Agents, or the Agents, then in each case the resolution of such issue (and also the treatment of such issue during the time period
(e) Each party hereto hereby agrees that Administrative Agent shall not take any action with respect to the matters set forth in this Section 9.13 without first notifying the Collateral Agents.

(f) Without limiting the generality of the foregoing, the Agents shall coordinate inspections, audits and appraisals with Collateral Agents and any examiner, auditor or appraiser shall be mutually agreeable to the Collateral Agents; provided, however, that in the event that the Collateral Agents cannot promptly agree on an examiner, auditor or appraiser, then so long as SunTrust remains a Collateral Agent, SunTrust (in its capacity as a Collateral Agent) shall have the authority to designate the examiner, auditor or appraiser.

(g) Each Loan Party and Secured Party acknowledges and agrees that the Collateral Agents shall have the same rights provided to Administrative Agent under the Agreement and other Loan Documents with respect to indemnification, limitations on liability and reliance on notices and other materials provided by the Loan Parties and other Persons and subject in each case, to the same restrictions and limitations applicable to the Administrative Agent (including, without limitation, qualifications relating to such Person’s discretion). No implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Collateral Agents.

(h) Each Collateral Agent, in its capacity as a co-Collateral Agent hereunder, acknowledges and agrees that it will not take any action, and will not knowingly direct the Administrative Agent to take any action or omit to take any action, with respect to any Collateral in a manner that is inconsistent with the terms and provisions of the Intercreditor Agreement.


Each Bank Services Provider agrees to furnish to the Administrative Agent at such frequency as the Administrative Agent may reasonably request with a summary of all Obligations in respect of Bank Services due or to become due to such Bank Services Provider. In connection with any distributions to be made hereunder, the Administrative Agent shall be entitled to assume that no amounts are due to any Bank Services Provider unless the Administrative Agent has received written notice thereof from such Bank Services Provider and if such notice is received, the Administrative Agent shall be entitled to assume that the only amounts due to such Bank Services Provider on account of Bank Services is the amount set forth in such notice.

9.15 Survival.

This Section 9 shall survive the Discharge of Obligations.
10.1 Amendments and Waivers.

(a) Neither this Agreement, nor any other Loan Document (other than any L/C Related Document and other than any Bank Services Agreement), nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1. The Required Lenders and each Loan Party party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (i) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (ii) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided that no such waiver and no such amendment, supplement or modification shall (A) forgive the principal amount or extend the final scheduled date of maturity of any Loan or L/C Disbursement, reduce the stated rate of any interest or fee payable hereunder (except that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or fees for purposes of this clause (A)) or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Lender’s Revolving Commitment, in each case without the written consent of each Lender directly affected thereby; (B) amend, modify, or eliminate this Section 10.1, Section 5.1, Section 5.2, or Section 9.10, without the written consent of each Lender; (C) eliminate, amend, waive, or otherwise modify the definition of Required Lenders or reduce any percentage specified in the definition of Required Lenders or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release all or substantially all of the value of the guarantees of the obligations under the Guarantee and Collateral Agreement, in each case without the written consent of all Lenders; (D) amend or otherwise modify or eliminate the definition of the term “Borrowing Base” or any component definition thereof if, as a result thereof, the amounts available to be borrowed by the Borrower would be increased, without the written consent of all Lenders, provided that the foregoing shall not limit the discretion of the Collateral Agents to change, establish or eliminate any Reserves without the consent of any Lenders; (E) (i) amend, modify or waive the pro rata requirements of Section 2.18 in a manner that adversely affects Revolving Lenders without the written consent of each Revolving Lender or (ii) amend, modify or waive the pro rata requirements of Section 2.18 in a manner that adversely affects the L/C Lenders without the written consent of each L/C Lender; (F) amend, modify or waive any provision of Section 9 without the written consent of the Administrative Agent; (G) amend, modify or waive any provision of Section 2.6 or 2.7 without the written consent of the Swingline Lender; (H) amend, modify or waive any provision of Section 3 without the written consent of the Issuing Lender; (I) amend or modify the application of payments set forth in Section 6.3(c) or Section 8.3 in a manner that adversely affects any Agent without the written consent of each Agent and each Agent, (ii) amend or modify the application of payments set forth in in Section 6.3(c) or Section 8.3 in a manner that adversely affects the L/C Lenders without the written consent of the L/C Lenders, or (iii) amend or modify the application of payments provisions set forth in in Section 6.3(c) or Section 8.3 in a manner that adversely affects the Issuing Lender, Bank Services Provider or any Qualified Counterparty, as applicable, without the written consent of the Issuing Lender, Bank Services Provider or each such Qualified Counterparty, as applicable, (J) contractually subordinate any of Administrative Agent’s Liens securing the Obligations without the consent of each Lender, (K) amend, modify, or waive any provision of this Agreement (including Section 9.13) or the other Loan Documents pertaining to an Agent, or any other rights or duties of an Agent under this Agreement or the other
Loan Documents, without the written consent of each Agent, Borrower, and the Required Lenders, or (L) amend, modify, or eliminate any of the provisions of Section 10.6(b) restricting assignments to, or participations with, Persons who are Loan Parties or Affiliates or Subsidiaries of any Loan Party. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, each Agent, the Issuing Lender, each Bank Services Provider, each Qualified Counterparty, and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured during the period such waiver is effective; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Notwithstanding the foregoing, the Issuing Lender may amend any of the L/C Documents without the consent of the Administrative Agent or any other Lender.

(b) Notwithstanding anything to the contrary contained in Section 10.1(a) above, in the event that the Borrower or any other Loan Party, as applicable, requests that this Agreement or any of the other Loan Documents, as applicable, be amended or otherwise modified in a manner which would require the consent of all of the Lenders and such amendment or other modification is agreed to by the Borrower and/or such other Loan Party, as applicable, the Required Lenders and the Administrative Agent, then, with the consent of the Borrower and/or such other Loan Party, as applicable, the Administrative Agent and the Required Lenders, this Agreement or such other Loan Document, as applicable, may be amended without the consent of the Lender or Lenders who are unwilling to agree to such amendment or other modification (each, a “Minority Lender”), to provide for:

(i) the termination of the Revolving Commitments of each such Minority Lender;

(ii) the assumption of the Loans and Revolving Commitments of each such Minority Lender by one or more Replacement Lenders pursuant to the provisions of Section 2.23; and

(iii) the payment of all interest, fees and other obligations payable or accrued in favor of each Minority Lender and such other modifications to this Agreement or to such Loan Documents as the Borrower, the Administrative Agent and the Required Lenders may determine to be appropriate in connection therewith.

(c) [Reserved.]

(d) Notwithstanding any provision herein to the contrary, any Bank Services Agreement or Specified Swap Agreement may be amended or otherwise modified by the parties thereto in accordance with the terms thereof without the consent of the Administrative Agent or any Lender.

10.2 Notices.

(a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile or electronic mail), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three (3) Business Days after being deposited in the mail, postage prepaid, or, in the case of facsimile or electronic mail notice, when received, addressed as follows in the case of the Borrower and the Administrative Agent and SunTrust in its capacity as a Collateral Agent, and as set forth in an administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:
Borrower: FitBit, Inc.
150 Spear Street
San Francisco, California 94105
with a copy to (which shall not constitute notice):
Fenwick & West LLP
801 California Street
Mountain View, CA 94041

Administrative Agent
or SVB, as a Collateral Agent:
Silicon Valley Bank
2400 Hanover Street
Palo Alto, CA 94304
with a copy to (which shall not constitute notice):
Riemer & Braunstein LLP
7 Times Square, Ste. 2506
New York, NY 10036
provided that any notice, request or demand to or upon the Administrative Agent, any Collateral Agent or the Lenders shall not be effective until received.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including email and Internet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (a) notices and other communications sent to an email address shall be deemed received upon the sender’s receipt of an acknowledgment from the intended recipient (such as by the “return receipt requested” function, as available, return email or other written acknowledgment); and (b) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing clause (a) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (a) and (b), if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(d) (i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Lender and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the “Platform”).

(ii) the Platform is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without
limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrower or the other Loan Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower’s, any Loan Party’s or the Administrative Agent’s transmission of communications through the Platform. “Communications” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or the Issuing Lender by means of electronic communications pursuant to this Section, including through the Platform.

10.3 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate 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. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.4 Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

10.5 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by each Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for each Agent), and shall pay all fees and time charges and disbursements for attorneys who may be employees of any Agent, in connection with the syndication of the Facilities, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all out-of-pocket expenses incurred by any Agent or any Lender (including the fees, charges and disbursements of any counsel for any Agent or any Lender, and shall pay all fees and time charges for attorneys who may be employees of any Agent or any Lender, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued or participated in hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each other Agent (and any sub-agent thereof), each Lender (including the Issuing Lender), and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or
delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Materials of Environmental Concern on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 10.5(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower or any other Loan Party pursuant to any other Loan Document for any reason fails indefeasibly to pay any amount required under paragraph (a) or (b) of this Section to be paid by it to any Agent (or any sub-agent thereof), the Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to such Agent (or any such sub-agent), the Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender’s pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender’s share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to the Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders’ Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) and provided further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against any Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for such Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Sections 2.1, 2.4 and 2.20(e).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. Absent the gross negligence or willful misconduct of such Indemnitee as determined by a court of competent jurisdiction by a final and nonappealable judgment, no Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.
(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) Survival. Each party’s obligations under this Section shall survive the resignation of any of the Agents, the Issuing Lender and the Swingline Lender, the replacement of any Lender, the termination of the Loan Documents, the termination of the Revolving Commitments and the Discharge of Obligations.

10.6 Successors and Assigns; Participations and Assignments.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (which for purposes of this Section 10.6 shall include any Bank Services Provider (in its capacity as a provider of Bank Services) that is party to any Bank Services Agreement with the Borrower or another Group Member), except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitments and the Loans at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender’s Revolving Commitments and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Revolving Commitments (which for this purpose includes Loans outstanding thereunder) or, if the applicable Revolving Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $5,000,000 unless each of the Administrative Agent and, so long as no Default or Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).
(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loans and/or the Revolving Commitments assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment by a Lender except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default or an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the consent of the Borrower for an assignment to any Person that the Borrower reasonably classifies in writing as a competitor of the Borrower may be given or denied by the Borrower in its sole discretion; and provided, further, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five Business Days after having received reasonably detailed written notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of the Revolving Facility if such assignment is to a Person that is not a Lender with a Revolving Commitment in respect of such Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent (such consent not to be unreasonably withheld or delayed) of the Issuing Lender and the Swingline Lender shall be required for any assignment in respect of the Revolving Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent any such administrative questionnaire as the Administrative Agent may request.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) a Loan Party or any of a Loan Party’s Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lender, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in
Letters of Credit and Swingline Loans in accordance with its Revolving Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.19, 2.20, 2.21 and 10.5 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender’s having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in California a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent, the Issuing Lender or the Swingline Lender, sell participations to any Person (other than a natural Person or any Loan Party or any of any Loan Party’s Affiliates or Subsidiaries) (each, a “Participant”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Revolving Commitments and/or the Loans owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Issuing Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnities under Sections 2.20(e) and 9.7 with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver which affects such Participant and for which the consent of such Lender is required (as described in Section 10.1). The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.19, 2.20 and 2.21 (subject to the requirements and limitations therein, including the requirements under Section 2.20(f), it being understood that the documentation required under Section 2.20(f) shall be delivered to such

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Participant) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 2.23 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.19 or 2.20, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in any Requirement of Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower’s request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.23 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(k) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a nonfiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Notes. The Borrower, upon receipt by the Borrower of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in Section 10.6.

10.7 Adjustments; Set-off.

(a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender or to the Lenders under a particular Facility, if any Lender (“Benefitted Lender”) shall, at any time after the Loans and other amounts payable hereunder shall immediately become due and payable pursuant to Section 8.2, receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 8.1(f), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.
(b) Upon (i) the occurrence and during the continuance of any Event of Default and (ii) obtaining the prior written consent of the Administrative Agent, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, without prior notice to the Borrower or any other Loan Party, any such notice being expressly waived by the Borrower and each Loan Party, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, at any time held or owing, and any other credits, indebtedness, claims or obligations, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender, its Affiliates or any branch or agency thereof or for the credit or the account of the Borrower or any other Loan Party, as the case may be, against any and all of the obligations of the Borrower or such other Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or its Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such other Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender or any of its Affiliates shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.23 and, pending such payment, shall be segregated by such Defaulting Lender or Affiliate thereof from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender or Affiliate thereof as to which it exercised such right of setoff. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application made by such Lender or any of its Affiliates; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender and its Affiliates under this Section 10.7 are in addition to other rights and remedies (including other rights of set-off) which such Lender or its Affiliates may have.

10.8 Payments Set Aside. If any Secured Party repays, refunds, restores, or returns in whole or in part, any payment or property (including any proceeds of Collateral) previously paid or transferred to such Person in full or partial satisfaction of any Obligation or on account of any other obligation of any Loan Party under any Loan Document or any Bank Services Agreement or any Specified Swap Agreement, because the payment, transfer, or the incurrence of the obligation so satisfied is asserted or declared to be void, voidable, or otherwise recoverable under any law relating to creditors’ rights, including provisions of the Bankruptcy Code relating to fraudulent transfers, preferences, or other voidable or recoverable obligations or transfers (each, a “Voidable Transfer”), or because such Person elects to do so on the reasonable advice of its counsel in connection with a claim that the payment, transfer, or incurrence is or may be a Voidable Transfer, then, as to any such Voidable Transfer, or the amount thereof that such Person elects to repay, restore, or return (including pursuant to a settlement of any claim in respect thereof), and as to all reasonable costs, expenses, and attorneys’ fees of such Lender or Bank Services Provider related thereto, (i) the liability of the Loan Parties with respect to the amount or property paid, refunded, restored, or returned will automatically and immediately be revived, reinstated, and restored and will exist and (ii) the Administrative Agent’s Liens securing such liability shall be effective, revived, and remain in full force and effect, in each case, as fully as if such Voidable Transfer had never been made. If, prior to any of the foregoing, (A) the Administrative Agent’s Liens shall have been released or terminated or (B) any provision of this Agreement shall have been terminated or cancelled, the Administrative Agent’s Liens, or such provision of this Agreement, shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligation of any Loan Party in respect of such liability or any Collateral securing such liability. This Section 10.8 shall survive the Discharge of Obligations.

10.9 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum
rate of non-usurious interest permitted by applicable law (the “Maximum Rate”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by any Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Electronic Execution of Assignments.

(a) This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic mail transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

(b) The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

10.11 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.11, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited under or in connection with any Insolvency Proceeding, as determined in good faith by the Administrative Agent or the Issuing Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.12 Integration. This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the other Loan Parties, the Agents and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

10.13 GOVERNING LAW. THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. This Section 10.13 shall survive the Discharge of Obligations.
10.14 Submission to Jurisdiction; Waivers. The Borrower hereby irrevocably and unconditionally:

(a) submits to the exclusive jurisdiction of the State and Federal courts in the Southern District of the State of New York in the Borough of Manhattan; provided that nothing in this Agreement shall be deemed to operate to preclude the Administrative Agent or any Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Administrative Agent or such Lender. The Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and the Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. The Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to the Borrower at the addresses set forth in Section 10.2 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of the Borrower’s actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid;

(b) WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL;

(c) AGREES THAT IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM AND THE WAIVER SET FORTH IN SECTION 10.13 ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBCLAUSE (ii) BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SHALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF OR RECOUPEMENT), (C) APPOINTMENT OF A RECEIVER, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.
(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN 10 DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.


(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.

(vi) THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE’S DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.

(vii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS; and
(d) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

This Section 10.14 shall survive the Discharge of Obligations.

10.15 Acknowledgements. The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) none of any Agent nor any Lender has any fiduciary relationship with or duty to the Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Agents and Lenders, on one hand, and the Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower and the Lenders.

10.16 [Reserved.]

10.17 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties having a need to know such information in connection with the transactions contemplated by this Agreement (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), in which case such Person agrees, except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulator authority, to the extent practicable and not prohibited by applicable law, to inform the Borrower promptly thereof; (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, upon the request or demand of any Governmental Authority, in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law or if requested or required to do so in connection with any litigation or similar proceeding (in which case such Person agrees, to the extent practicable and not prohibited by applicable laws, regulations, subpoena or legal process, to inform the Borrower promptly thereof); (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement enforceable by the Borrower containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the Facilities or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facilities; (h) with the consent of the Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower.

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Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. However, any such information relating to the tax treatment or tax structure is required to be kept confidential to the extent necessary to comply with any applicable federal or state securities laws.

For purposes of this Section, “Information” means all information received from the Borrower or any of its Subsidiaries relating to the Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by the Borrower or any of its Subsidiaries; provided that, in the case of information received from the Borrower or any of its Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information, but in no event less than reasonable care.

10.18 Automatic Debits. With respect to any principal, interest, fee, or any other cost or expense (including attorney costs of any Agent or any Lender payable by the Borrower hereunder) due and payable to any Agent or any Lender under the Loan Documents, the Borrower hereby irrevocably authorizes the Administrative Agent to debit any deposit account of the Borrower maintained with the Administrative Agent in an amount such that the aggregate amount debited from all such deposit accounts does not exceed such principal, interest, fee or other cost or expense. If there are insufficient funds in such deposit accounts to cover the amount then due, such debits will be reversed (in whole or in part, in the Administrative Agent’s sole discretion) and such amount not debited shall be deemed to be unpaid. No such debit under this Section 10.18 shall be deemed a set-off.

10.19 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Borrower and each other Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under any other Loan Document shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from any Borrower or any other Loan Party in the Agreement Currency, such Borrower and each other Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Borrower or other Loan Party, as applicable (or to any other Person who may be entitled thereto under applicable law).
10.20 Patriot Act. Each Lender, each Collateral Agent, and the Administrative Agent (for itself and not on behalf of any other party) hereby notifies the Borrower that, pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the names and addresses and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Patriot Act. The Borrower will, and will cause each of its Subsidiaries to, provide, to the extent commercially reasonable or required by any Requirement of Law, such information and take such actions as are reasonably requested by the Administrative Agent or any Lender to assist the Administrative Agent and the Lenders in maintaining compliance with the Patriot Act.

10.21 Acknowledgment of Prior Obligations and Continuation Thereof. The Borrower (a) consents to the amendment and restatement of the Existing Credit Agreement by this Agreement; (b) acknowledges and agrees that (i) the “Obligations” (as defined in the Existing Credit Agreement) are owing to the Secured Parties (as defined in the Existing Credit Agreement), (ii) the prior grant or grants of security interests in favor of any of the Administrative Agent or any other Secured Party (as defined in the Existing Credit Agreement) in its properties and assets, under each “Loan Document” as defined in the Existing Credit Agreement (the “Original Loan Documents”) to which it is a party shall be in respect of the Obligations of such Person under this Agreement and the other Loan Documents; (c) reaffirms (i) all of the Obligations (as defined in the Existing Credit Agreement) owing to the Administrative Agent and the other Secured Parties (as defined in the Existing Credit Agreement), and (ii) all prior or concurrent grants of security interests in favor of any of the Administrative Agent or any other Secured Party (as defined in the Existing Credit Agreement) under each Original Loan Document and each Loan Document; and (d) agrees that, except as expressly amended hereby or unless being amended and restated concurrently herewith, each of the Original Loan Documents to which it is a party is and shall remain in full force and effect. The Borrower hereby confirms and agrees that all outstanding principal, interest and fees and other “Obligations” (as defined in the Existing Credit Agreement) under the Existing Credit Agreement immediately prior to the Closing Date shall, to the extent not paid on the Closing Date, from and after the Closing Date, be, without duplication, Obligations owing and payable pursuant to this Agreement and the other Loan Documents as in effect from time to time, shall accrue interest thereon as specified in this Agreement, and shall be secured by the Loan Documents.

10.22 No Novation. This Agreement does not extinguish the obligations for the payment of money outstanding under the Existing Credit Agreement or discharge or release the obligations or the liens or priority of any mortgage, pledge, security agreement or any other security therefor. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Existing Credit Agreement, the other Original Loan Documents or instruments securing the same, which shall remain in full force and effect, except as modified hereby or by instruments executed concurrently herewith. Nothing expressed or implied in this Agreement shall be construed as a release or other discharge of the Borrower or any Guarantor from any of its obligations or liabilities under the Existing Credit Agreement or any of the security agreements, pledge agreements, mortgages, guaranties or other loan documents executed in connection therewith. The Borrower hereby (a) confirms and agrees that each Original Loan Document to which it is a party that is not being amended and restated concurrently herewith is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects except that on and after the Closing Date, all references in any such Original Loan Document to “the Credit Agreement,” “thereto,” “thereof,” “thereunder” or words of like import referring to the Existing Credit Agreement shall mean the Existing Credit Agreement as amended and restated by this Agreement; and (b) confirms and agrees that to the extent that any such Original Loan Document purports to assign or pledge to any Secured Party a security interest in or lien on, any collateral as security for all or any portion of any of the Obligations of the Borrower or any other Loan Party, as the case may be, from time to time existing in respect of the Existing Credit Agreement or the Original Loan Document, such pledge or assignment or grant of the security interest or lien is hereby ratified and confirmed in all respects with respect to this Agreement and the Loan Documents.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

BORROWER:

FITBIT, INC.,
as the Borrower

By: /s/ William Zerella
Name: William Zerella
Title: Chief Financial Officer

Signature page to Amended and Restated Credit Agreement
SIGNATURE PAGE TO AMENDED AND RESTATED CREDIT AGREEMENT

ADMINISTRATIVE AGENT:

SILICON VALLEY BANK,
as the Administrative Agent

By: /s/ Jennie T. Bartlett
Name: Jennie T. Bartlett
Title: Vice President

Signature Page to Amended and Restated Credit Agreement
LENDERS:

SILICON VALLEY BANK,
as Issuing Lender, Swingline Lender, a
Collateral Agent and as a Lender

By:  /s/ Jennie T. Bartlett
Name:  Jennie T. Bartlett
Title:  Vice President

Signature Page to Amended and Restated Credit Agreement
SUNTRUST BANK, as a Collateral Agent, a Syndication Agent, and as a Lender

By: /s/ Chad Ramsey

Name: Chad Ramsey
Title: Director

Signature Page to Amended and Restated Credit Agreement
Signature Page to Amended and Restated Credit Agreement

MORGAN STANLEY SENIOR FUNDING, INC., as a Syndication Agent

By: /s/ Lisa Hanson
Name: Lisa Hanson
Title: Authorized Signatory
MORGAN STANLEY BANK, N.A., as a Lender

By: /s/ Lisa Hanson
Name: Lisa Hanson
Title: Authorized Signatory

Signature Page to Amended and Restated Credit Agreement
COMERICA BANK, as a Lender

By: /s/ Megan Bangert
Name: Megan Bangert
Title: VP

Signature Page to Amended and Restated Credit Agreement
DEUTSCHE BANK AG, NEW YORK BRANCH, as a Lender

By: /s/ Anca Trifan
Name: Anca Trifan
Title: Managing Director

By: /s/ Dusan Lazarov
Name: Dusan Lazarov
Title: Director

Signature Page to Amended and Restated Credit Agreement
CITY NATIONAL BANK, as a Lender

By: /s/ Kevin J. Conway
Name: Kevin J. Conway
Title: Vice President

Signature Page to Amended and Restated Credit Agreement
## SCHEDULE 1.1A

### REVOLVING COMMITMENTS

AND AGGREGATE EXPOSURE PERCENTAGES

#### REVOLVING COMMITMENTS

<table>
<thead>
<tr>
<th>Lender</th>
<th>Revolving Commitment</th>
<th>Revolving Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Silicon Valley Bank</td>
<td>$37,875,000</td>
<td>21.0416667%</td>
</tr>
<tr>
<td>SunTrust Bank</td>
<td>$37,875,000</td>
<td>21.0416667%</td>
</tr>
<tr>
<td>Morgan Stanley Bank, N.A.</td>
<td>$37,875,000</td>
<td>21.0416667%</td>
</tr>
<tr>
<td>Comerica Bank</td>
<td>$30,000,000</td>
<td>16.6666667%</td>
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<tr>
<td>Deutsche Bank AG, New York Branch</td>
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<td>13.8888889%</td>
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<tr>
<td>City National Bank</td>
<td>$11,375,000</td>
<td>6.31944444%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$180,000,000</strong></td>
<td><strong>100%</strong></td>
</tr>
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#### L/C COMMITMENTS

(which is a sublimit of, and not in addition to, the Revolving Commitments)

<table>
<thead>
<tr>
<th>Lender</th>
<th>L/C Commitments</th>
<th>L/C Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Silicon Valley Bank</td>
<td>$10,520,833.35</td>
<td>21.0416667%</td>
</tr>
<tr>
<td>SunTrust Bank</td>
<td>$10,520,833.33</td>
<td>21.0416667%</td>
</tr>
<tr>
<td>Morgan Stanley Bank, N.A.</td>
<td>$10,520,833.33</td>
<td>21.0416667%</td>
</tr>
<tr>
<td>Comerica Bank</td>
<td>$8,333,333.33</td>
<td>16.6666667%</td>
</tr>
<tr>
<td>Deutsche Bank AG, New York Branch</td>
<td>$6,944,444.44</td>
<td>13.8888889%</td>
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<tr>
<td>City National Bank</td>
<td>$3,159,722.22</td>
<td>6.31944444%</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$50,000,000</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

#### SWINGLINE COMMITMENT

(which is a sublimit of, and not in addition to, the Revolving Commitments)

<table>
<thead>
<tr>
<th>Lender</th>
<th>Swingline Commitment</th>
<th>Exposure Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Silicon Valley Bank</td>
<td>$25,000,000</td>
<td>100%</td>
</tr>
<tr>
<td>SunTrust Bank</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>Lender</td>
<td>Swingline Commitment</td>
<td>Exposure Percentage</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>----------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>Morgan Stanley Bank, N.A.</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>Comerica Bank</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>Deutsche Bank AG, New York Branch</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>City National Bank</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$25,000,000</strong></td>
<td><strong>100%</strong></td>
</tr>
<tr>
<td>L/C Number</td>
<td>Issuance Date</td>
<td>Expiration Date</td>
</tr>
<tr>
<td>---------------</td>
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<td>-----------------</td>
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<tr>
<td>SVBSF008327</td>
<td>09/25/2013</td>
<td>09/25/2014</td>
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<tr>
<td>SVBSF008561</td>
<td>11/18/2013</td>
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<tr>
<td>SVBSF007344</td>
<td>03/26/2012</td>
<td>03/26/2015</td>
</tr>
<tr>
<td>Entity</td>
<td>Address Location</td>
<td></td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------------------</td>
<td></td>
</tr>
</tbody>
</table>
| FitBit, Inc. | 501 Airtech Parkway  
           Plainfield, IN 46168       |
| FitBit, Inc. | 55 Standish Court  
           Mississauga  
           Ontario, Canada L5R4A1       |
None.
SCHEDULE 4.5

REQUIREMENTS OF LAW

None.
<table>
<thead>
<tr>
<th>Entity</th>
<th>Name</th>
<th>Jurisdiction</th>
<th>Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Borrower</td>
<td>FitBit, Inc.</td>
<td>Delaware</td>
<td>N/A</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>FitBit Limited</td>
<td>United Kingdom</td>
<td>100% owned by FitBit, Inc.</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>FitBit International, LLC</td>
<td>Delaware</td>
<td>100% owned by FitBit, Inc.</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>FitBit Korea Ltd.</td>
<td>Korea</td>
<td>100% owned by FitBit International, LLC</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>Fitbit (Hong Kong) Limited</td>
<td>Hong Kong</td>
<td>100% owned by FitBit International, LLC</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>Fitbit (Australia) Pty Ltd</td>
<td>Australia</td>
<td>100% owned by FitBit International, LLC</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>Fitbit International Holdings</td>
<td>Ireland</td>
<td>100% owned by FitBit International, LLC</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>Fitbit Holdings</td>
<td>Ireland</td>
<td>100% owned by FitBit International, LLC</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>Fitbit International Limited</td>
<td>Ireland</td>
<td>100% owned by Fitbit Holdings</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>Fitbit Bel</td>
<td>Belarus</td>
<td>0.01% owned by FitBit, Inc.</td>
</tr>
</tbody>
</table>

* Formation of corporate entities in Japan and China are in progress.
ENVIRONMENTAL MATTERS

None.
1. UCC Financing Statement naming FitBit, Inc., as “debtor” and the Administrative Agent as “secured party” to be filed with the Secretary of State of the State of Delaware.

2. UCC Financing Statement naming FitBit International, LLC as “debtor” and the Administrative Agent as “secured party” to be filed with the Secretary of State of the State of Delaware.


4. Trademark Security Agreement(s) in the USPTO against the U.S. registered trademarks and trademark applications identified by the registration and application numbers set forth on Schedule 1 to the Trademark Security Agreement.
## Fully Diluted Capitalization Table (Issued and Outstanding Shares) - Summary

**As of 8/12/2014**

### COMMON STOCK (Authorized: 75,900,000)

<table>
<thead>
<tr>
<th>Shares</th>
<th>CSE Shares*</th>
<th>Total Fully Diluted Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issued and Outstanding</td>
<td>13,454,239</td>
<td>13,454,239</td>
</tr>
</tbody>
</table>

### PREFERRED STOCK (Authorized: 48,176,304)

<table>
<thead>
<tr>
<th>Series</th>
<th>Shares</th>
<th>CSE Shares*</th>
<th>Total Fully Diluted Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>SERIES A Preferred Stock (Authorized: 3,400,000)</td>
<td>3,400,000</td>
<td>3,400,000</td>
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</tr>
<tr>
<td>SERIES A-1 Preferred Stock (Authorized: 7,456,304)</td>
<td>7,456,304</td>
<td>7,456,304</td>
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</tr>
<tr>
<td>SERIES B Preferred Stock (Authorized: 14,120,000)</td>
<td>14,017,560</td>
<td>14,017,560</td>
<td></td>
</tr>
<tr>
<td>SERIES C Preferred Stock (Authorized: 13,200,000)</td>
<td>12,026,668</td>
<td>12,026,668</td>
<td></td>
</tr>
<tr>
<td>SERIES D Preferred Stock (Authorized: 10,000,000)</td>
<td>9,716,629</td>
<td>9,716,629</td>
<td></td>
</tr>
</tbody>
</table>

### WARRANTS

<table>
<thead>
<tr>
<th>Series</th>
<th>Shares</th>
<th>CSE Shares*</th>
<th>Total Fully Diluted Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>SERIES B Preferred Stock</td>
<td>92,664</td>
<td>92,664</td>
<td></td>
</tr>
<tr>
<td>SERIES C Preferred Stock</td>
<td>559,000</td>
<td>559,000</td>
<td></td>
</tr>
</tbody>
</table>

### 2007 SP (Reserved: 17,258,920)

| Shares Issuable Under Plan: | | |
|-----------------------------|-----------------|
| Options and/or SPRs Issued and Outstanding | 13,769,985 | 13,769,985 |
| Options and/or SPRs Committed for Issuance | 0 | 0 |
| Shares Remaining for Issuance Under Plan | 2,274,696 | 2,274,696 |
| Reserved in Plan | 17,258,920 | 17,258,920 |
| Options and/or SPRs Exercised | 1,214,239 | 1,214,239 |

### Total shares issued and outstanding, including shares committed for issuance and exercise of all outstanding options

<table>
<thead>
<tr>
<th>Shares</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>76,767,745</td>
<td>100%</td>
</tr>
</tbody>
</table>

### Fully-Diluted Ownership

<table>
<thead>
<tr>
<th>Shares</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>13,454,239</td>
<td>17.53%</td>
</tr>
<tr>
<td>3,400,000</td>
<td>4.43%</td>
</tr>
<tr>
<td>7,456,304</td>
<td>9.71%</td>
</tr>
<tr>
<td>14,017,560</td>
<td>18.26%</td>
</tr>
<tr>
<td>12,026,668</td>
<td>15.67%</td>
</tr>
<tr>
<td>9,716,629</td>
<td>12.66%</td>
</tr>
<tr>
<td>92,664</td>
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<tr>
<td>559,000</td>
<td>0.73%</td>
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<tr>
<td>13,769,985</td>
<td>17.94%</td>
</tr>
<tr>
<td>2,274,696</td>
<td>2.96%</td>
</tr>
<tr>
<td>1,214,239</td>
<td>1.58%</td>
</tr>
</tbody>
</table>

| Total | 76,767,745 | 100% |

---

*Generated: 8/12/2014 3:32:31 PM PST*
1. Fitbit International Holdings
2. Fitbit (Australia) Pty Ltd.
EXISTING INDEBTEDNESS

None.
SCHEDULE 7.3(b)

EXISTING LIENS

None.
## SCHEDULE 7.8(a)
### EXISTING INVESTMENTS

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<thead>
<tr>
<th>Investment</th>
<th>Amount Invested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity Capitalization of Fitbit Limited (UK sub)</td>
<td>£100.00 GBP ($166.00 USD)</td>
</tr>
<tr>
<td>Equity Capitalization of Fitbit International, LLC</td>
<td>$8,100,000 USD</td>
</tr>
<tr>
<td>Equity Capitalization of Fitbit Korea Ltd.</td>
<td>$94,122.23 USD</td>
</tr>
<tr>
<td>Equity Capitalization of Fitbit (Hong Kong) Limited</td>
<td>$1,000 HKD ($128.76 USD)</td>
</tr>
<tr>
<td>Equity Capitalization of Fitbit International Holdings (Ireland)</td>
<td>$8,001,000 USD</td>
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<tr>
<td>Equity Capitalization of Fitbit International Holdings (Ireland)</td>
<td>$8,001,000 USD</td>
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<tr>
<td>Equity Capitalization of Fitbit International Limited (Ireland)</td>
<td>€2 EUR ($2.72 USD)</td>
</tr>
<tr>
<td>Equity Capitalization of Fitbit Bel</td>
<td>BYR 103,000 ($10,000 USD)</td>
</tr>
<tr>
<td>Consisting of:</td>
<td></td>
</tr>
<tr>
<td>Fitbit, Inc. - $1.00 USD</td>
<td></td>
</tr>
<tr>
<td>Fitbit Limited - $9,999.00 USD</td>
<td></td>
</tr>
<tr>
<td>Equity Capitalization of Fitbit (Australia) Pty Ltd.</td>
<td>$100 AUD ($9,257 USD)</td>
</tr>
</tbody>
</table>
FORM OF AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT

(Please see attached form)

Exhibit A
AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT

Dated as of August 13, 2014

made by

FITBIT, INC.

and the other Grantors referred to herein,

in favor of

SILICON VALLEY BANK,

as Administrative Agent
<table>
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<th>SECTION 1.</th>
<th>DEFINED TERMS</th>
<th>Page</th>
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<td>Definitions</td>
<td>2</td>
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<tr>
<td>1.2</td>
<td>Other Definitional Provisions</td>
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<td>2.1</td>
<td>Guarantee</td>
<td>6</td>
</tr>
<tr>
<td>2.2</td>
<td>Right of Contribution</td>
<td>6</td>
</tr>
<tr>
<td>2.3</td>
<td>No Subrogation</td>
<td>7</td>
</tr>
<tr>
<td>2.4</td>
<td>Amendments, etc. with respect to the Secured Obligations</td>
<td>7</td>
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<tr>
<td>2.5</td>
<td>Guarantee Absolute and Unconditional; Guarantor Waivers; Guarantor Consents</td>
<td>8</td>
</tr>
<tr>
<td>2.6</td>
<td>Reinstatement</td>
<td>10</td>
</tr>
<tr>
<td>2.7</td>
<td>Payments</td>
<td>10</td>
</tr>
<tr>
<td>2.8</td>
<td>Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Agreement in respect of Secured Obligations under Specified Swap Agreements (provided that, each Qualified ECP Guarantor shall only be liable under this Section 2.8 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 2.8 or otherwise under this Agreement, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 2.8 shall remain in full force and effect until the Secured Obligations have been paid in full in cash and all Commitments have terminated. Each Qualified ECP Guarantor intends that this Section 2.8 constitute, and this Section 2.8 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.”</td>
<td>10</td>
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</tbody>
</table>

<table>
<thead>
<tr>
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<th>GRANT OF SECURITY INTEREST</th>
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<td>Grantors Remains Liable</td>
<td>12</td>
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<td>3.3</td>
<td>Perfection and Priority</td>
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<td>14</td>
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<td>4.2</td>
<td>Perfected Liens</td>
<td>14</td>
</tr>
<tr>
<td>4.3</td>
<td>Jurisdiction of Organization; Chief Executive Office and Locations of Books</td>
<td>14</td>
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<td>4.4</td>
<td>Inventory and Equipment</td>
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<td>4.5</td>
<td>Farm Products</td>
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<td>4.6</td>
<td>Pledged Collateral</td>
<td>14</td>
</tr>
<tr>
<td>4.7</td>
<td>Investment Accounts</td>
<td>15</td>
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<td>4.8</td>
<td>Receivables</td>
<td>15</td>
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<td>4.9</td>
<td>Intellectual Property</td>
<td>16</td>
</tr>
<tr>
<td>4.10</td>
<td>Instruments</td>
<td>16</td>
</tr>
<tr>
<td>4.11</td>
<td>Letter of Credit Rights</td>
<td>16</td>
</tr>
<tr>
<td>4.12</td>
<td>Commercial Tort Claims</td>
<td>16</td>
</tr>
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<table>
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<th>SECTION 5.</th>
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<td>Delivery of Instruments, Certificated Securities and Chattel Paper</td>
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### 5.3  Maintenance of Perfected Security Interest; Further Documentation

### 5.4  Changes in Locations, Name, Etc.

### 5.5  Notices

### 5.6  Instruments; Investment Property

### 5.7  Securities Accounts; Deposit Accounts

### 5.8  Intellectual Property

### 5.9  Receivables

### 5.10  Defense of Collateral

### 5.11  Preservation of Collateral

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### 5.14  Location of Collateral

### 5.15  Maintenance of Records

### 5.16  Disposition of Collateral

### 5.17  Liens

### 5.18  Expenses

### 5.19  Leased Premises; Collateral Held by Warehouseman, Bailee, Etc.

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### 5.21  Commercial Tort Claims

### 5.22  Letter-of-Credit Rights

### 5.23  Shareholder Agreements and Other Agreements

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#### 6.3  Investment Property

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#### 6.5  Application of Proceeds

#### 6.6  Code and Other Remedies

#### 6.7  Pledged Stock

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<td>GOVERNING LAW</td>
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<td>Submission to Jurisdiction; Waivers</td>
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<td>Intellectual Property License</td>
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<td>8.15</td>
<td>Acknowledgements</td>
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<td>Additional Grantors</td>
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<td>8.18</td>
<td>WAIVER OF JURY TRIAL</td>
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<td>8.19</td>
<td>Amendment and Restatement of Existing Guarantee Agreement</td>
<td>33</td>
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<tr>
<td>8.20</td>
<td>Intercreditor Agreement</td>
<td>33</td>
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</table>
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(continued)

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<th>Schedule</th>
<th>Description</th>
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<tbody>
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<td>1</td>
<td>Notice Addresses</td>
</tr>
<tr>
<td>2</td>
<td>Investment Property</td>
</tr>
<tr>
<td>3</td>
<td>Perfection Matters</td>
</tr>
<tr>
<td>4</td>
<td>Jurisdictions of Organization and Chief Executive Offices, etc.</td>
</tr>
<tr>
<td>5</td>
<td>Equipment and Inventory Locations</td>
</tr>
<tr>
<td>6</td>
<td>Intellectual Property</td>
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<tr>
<td>7</td>
<td>Letter of Credit Rights</td>
</tr>
<tr>
<td>8</td>
<td>Commercial Tort Claims</td>
</tr>
</tbody>
</table>

#### ANNEXES

<table>
<thead>
<tr>
<th>Annex</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Form of Assumption Agreement</td>
</tr>
<tr>
<td>2</td>
<td>Form of Pledge Supplement</td>
</tr>
<tr>
<td>3</td>
<td>Form of Copyright Security Agreement</td>
</tr>
<tr>
<td>4</td>
<td>Form of Trademark Security Agreement</td>
</tr>
<tr>
<td>5</td>
<td>Form of Patent Security Agreement</td>
</tr>
</tbody>
</table>
This AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT (this “Agreement”), dated as of August 13, 2014, is made by FITBIT, INC., a Delaware corporation (the “Borrower”), each other Person listed on the signature pages hereto as a “Grantor”, and each other entity that may become a party hereto as provided herein (the Borrower and each such Persons or entities, each a “Grantor” and, collectively, the “Grantors”), in favor of SILICON VALLEY BANK (“SVB”), as administrative agent (together with its successors, in such capacity, the “Administrative Agent”) for the banks and other financial institutions or entities (each a “Lender” and, collectively, the “Lenders”) from time to time parties to that certain Amended and Restated Credit Agreement, dated as of the date hereof (as amended, amended and restated, supplemented, restructured or otherwise modified, renewed or replaced from time to time, the “Credit Agreement”), among the (a) Borrower, (b) the Lenders party thereto, (c) the Administrative Agent, SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (d) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (e) SVB, SunTrust Robinson Humphrey, Inc. and Morgan Stanley, as co-lead arrangers and joint bookrunners. This Agreement amends and restates in its entirety, but shall not constitute a novation, waiver, release or modification of any rights, claims or remedies of the Administrative Agent under the Guarantee and Collateral Agreement, dated as of February 27, 2014 (as amended, supplemented, amended and restated or otherwise modified from time to time prior to the date hereof, the “Existing Guarantee Agreement”), by and among the Grantors and the Administrative Agent, and continues the security interests granted thereunder to the extent set forth herein.

INTRODUCTORY STATEMENTS

WHEREAS, the Borrower, the Administrative Agent, and certain other parties are party to that certain Credit Agreement, dated as of February 27, 2014 (as the same has been amended, restated, supplemented or otherwise modified from time to time prior to the Closing Date, the “Existing Credit Agreement”);

WHEREAS, the Borrower desires to amend and restate the Existing Credit Agreement to refinance certain Indebtedness, as well to provide as for working capital financing and letter of credit facilities, in each case as further provided in the Credit Agreement;

WHEREAS, the Borrower and any other party hereto as a “Grantor” are or will be part of an affiliated group of companies that includes each other Grantor;

WHEREAS, the proceeds of the extensions of credit under the Credit Agreement will be used in part to enable the Borrower to make valuable transfers to one or more of the other Grantors (if any) in connection with the operation of their respective business;

WHEREAS, certain of the Qualified Counterparties may enter into Specified Swap Agreements with the Borrower;

WHEREAS, the Borrower and the other Grantors (if any) are engaged in related businesses, and each Grantor derives substantial direct and indirect benefit from the extensions of credit under the Credit Agreement and from the Specified Swap Agreements; and

WHEREAS, it is a condition precedent to amendment and restatement of the Existing Credit Agreement and the Closing Date that the Grantors shall have executed and delivered this Agreement in favor of the Administrative Agent for the ratable benefit of the Secured Parties.
NOW, THEREFORE, in consideration of the above premises, the parties hereto hereby agree as follows:

SECTION 1. DEFINED TERMS.

1.1 Definitions.

(a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the respective meanings given to such terms in the Credit Agreement, and the following terms are used herein as defined in the UCC: Account, Certificated Security, Chattel Paper, Commercial Tort Claim, Commodity Account, Document, Equipment, Farm Products, Fixtures, General Intangible, Goods, Instrument, Inventory, Letter-of-Credit Rights, Money, Securities Account and Supporting Obligation.

(b) The following terms shall have the following meanings:

“A “Agreement””: as defined in the preamble hereto.

“Books””: all books, records and other written, electronic or other documentation in whatever form maintained now or hereafter by or for any Grantor in connection with the ownership of its assets or the conduct of its business or evidencing or containing information relating to the Collateral, including: (a) ledgers; (b) records indicating, summarizing, or evidencing such Grantor’s assets (including Inventory and Rights to Payment), business operations or financial condition; (c) computer programs and software; (d) computer discs, tapes, files, manuals, spreadsheets; (e) computer printouts and output of whatever kind; (f) any other computer prepared or electronically stored, collected or reported information and equipment of any kind; and (g) any and all other rights now or hereafter arising out of any contract or agreement between such Grantor and any service bureau, computer or data processing company or other Person charged with preparing or maintaining any of such Grantor’s books or records or with credit reporting, including with regard to any of such Grantor’s Accounts.

“Borrower””: as defined in the preamble hereto.

“Collateral””: as defined in Section 3.1.

“Collateral Account””: any collateral account established by the Administrative Agent as provided in Section 6.4 of this Agreement or Section 6.3 of the Credit Agreement.

“Commodity Exchange Act””: the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Copyright License””: any written agreement which (a) names a Grantor as licensor or licensee (including those listed on Schedule 6), or (b) grants any right under any Copyright to a Grantor, including any rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

“Copyrights””: (a) all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, together with the underlying works of authorship (including titles), whether registered or unregistered and whether published or unpublished (including those listed on Schedule 6), all computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible property embodying or incorporating any copyrights, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the United States Copyright Office, in each case owned by a Grantor, and (b) the right to obtain any renewals thereof.
**Deposit Account**: as defined in the Uniform Commercial Code of any applicable jurisdiction and, in any event, including any demand, time, savings, passbook or like account maintained with a depository institution.

**Discharge of Obligations**: as defined in the Credit Agreement.

**Employment Wage/Benefit Payment Deposit Account**: deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Grantor’s employees.

**Excluded Assets**: collectively,

(a) Capital Stock of any Excluded Foreign Subsidiary (other than (i) voting Capital Stock of any Excluded Foreign Subsidiary representing 66% of the total outstanding voting Capital Stock of any Excluded Foreign Subsidiary and (ii) 100% of the non-voting Capital Stock of any Excluded Foreign Subsidiary);

(b) any intent-to-use trademarks at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise;

(c) Capital Stock of FitBit International, LLC (other than (i) voting Capital Stock of FitBit International, LLC representing 66% of the total outstanding voting Capital Stock of FitBit International, LLC and (ii) 100% of the non-voting Capital Stock of FitBit International, LLC) so long as FitBit International, LLC is a disregarded entity for United States tax purposes and substantially all of its assets consist of Investments in Foreign Subsidiaries;

(d) rights held under a license or other contract that are not assignable by their terms without the consent of the licensor or other party thereof (but only to the extent such transfer is unenforceable under applicable law);

(e) any interest of a Grantor as a lessee under an Equipment lease if such Loan Party is prohibited by the terms of such lease from granting a security interest in such lease or under which such an assignment or Lien would cause a default to occur under such lease; provided, however, that upon termination of such prohibition, such interest shall immediately become Collateral without any action by such Grantor or the Administrative Agent; and

(f) any interest of a Grantor under any Governmental Approval if granting a security interest or Lien thereon is prohibited under applicable law or would expose such Grantor to the risk of termination, revocation or any similar result with respect to such Governmental Approval under applicable law; provided, however, that (i) any Proceeds, substitutions or replacements of any Excluded Assets shall not be Excluded Assets (unless such Proceeds, substitutions or replacements are otherwise, in and of themselves, Excluded Assets); (ii) assets that satisfy clause (d), clause (e), or clause (f) above shall only constitute “Excluded Assets” if under the terms of such contract, lease, permit, Governmental Approval, license, or license agreement, or applicable law with respect thereto, the grant of a security interest or lien therein is prohibited as a matter of law or under the terms of such contract, lease, permit, Governmental Approval, license, or license agreement and such prohibition or restriction has not been waived or the consent of the other party to such contract, lease, permit, Governmental Approval, license, or license agreement has not been obtained (provided, that, the foregoing exclusions of this clause (ii), shall in no way be construed (1) to apply to the extent that any described prohibition or restriction is ineffective under Section 9-406, 9-407, 9-408, or
9-409 of the UCC or other applicable law, or (2) to apply to the extent that any consent or waiver has been obtained that would permit Agent’s security interest or lien to attach notwithstanding the prohibition or restriction on the pledge of such contract, lease, permit, Governmental Approval, license, or license agreement; and provided that the foregoing assets shall cease to constitute Excluded Assets and the security interest shall attach immediately at such time as such restriction is not effective or applicable, or such prohibition, breach, default or termination is no longer applicable or is waived, and to the extent severable, shall attach immediately to any portion of such assets (which assets shall not constitute Excluded Assets) that does not result in such consequences; (iii) the foregoing provisions of this definition of Excluded Assets to the contrary notwithstanding, “Excluded Assets” shall not include any asset or property that constitutes “Collateral” (as defined in the Cash Flow Credit Agreement); and (iv) the provisions of this definition of Excluded Assets shall in no way be construed to limit, impair, or otherwise affect any of the Administrative Agent’s or any other Secured Party’s continuing security interests in and liens upon any rights or interests of any Grantor in or to (1) monies due or to become due under or in connection with any described Excluded Assets, or (2) any proceeds from the sale, license, lease, or other dispositions of any such Excluded Assets.

“Excluded Swap Obligation”: with respect to any Grantor, any obligation to pay or perform under any Specified Swap Agreement, if and to the extent that all or a portion of the guarantee of such Grantor of, or the grant by such Grantor of a security interest to secure, such obligations under a Specified Swap Agreement (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Grantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Grantor or the grant of such security interest becomes effective with respect to such obligations under a Specified Swap Agreement or such guarantee. If any obligation to pay or perform under any Specified Swap Agreement arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such obligations under a Specified Swap Agreement that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

“Grantor”: as defined in the preamble hereto.

“Guarantor”: as defined in Section 2.1(a).

“Intellectual Property Security Agreement”: each intellectual property security agreement executed and delivered by the applicable Grantors, substantially in the form of Annex 3, Annex 4 or Annex 5, as applicable.

“Investment Account”: any of a Securities Account, a Commodity Account or a Deposit Account. “Investment Property”: the collective reference to (a) all “investment property” as such term is defined in Section 9-102(a)(49) of the UCC (other than any voting Capital Stock or other ownership interests of an Excluded Foreign Subsidiary excluded from the definition of “Pledged Stock”), and (b) whether or not constituting “investment property” as so defined, all Pledged Notes and all Pledged Collateral.

“Issuer”: with respect to any Investment Property, the issuer of such Investment Property.

“Patent License”: any written agreement which (a) names a Grantor as licensor or licensee and (b) grants to such Grantor any right under a Patent, including the right to manufacture, use or sell any invention covered in whole or in part by such Patent, including any such agreements referred to on Schedule 6.

“Patents”: (a) all letters patent of the United States, any other country or any political subdivision thereof, all reissues and extensions thereof and all goodwill associated therewith, including, without
limitation, any of the foregoing referred to on Schedule 6, (b) all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof, including, without limitation, any of the foregoing referred to on Schedule 6, and (c) all rights to obtain any reissues or extensions of the foregoing, in each case owned by a Grantor.

“Pledged Collateral”: (a) any and all Pledged Stock; (b) all other Investment Property of any Grantor; (c) all warrants, options or other rights entitling any Grantor to acquire any interest in Capital Stock or other securities of the direct or indirect Subsidiaries of such Grantor or of any other Person; (d) all Instruments; (e) all securities, property, interest, dividends and other payments and distributions issued as an addition to, in redemption of, in renewal or exchange for, in substitution or upon conversion of, or otherwise on account of, any of the foregoing; (f) all certificates and instruments now or hereafter representing or evidencing any of the foregoing; (g) all rights, interests and claims with respect to the foregoing, including under any and all related agreements, instruments and other documents; and (h) all cash and non-cash proceeds of any of the foregoing, in each case whether presently existing or owned or hereafter arising or acquired and wherever located, and as from time to time received or receivable by, or otherwise paid or distributed to or acquired by, any Grantor.

“Pledged Collateral Agreements”: as defined in Section 5.22.

“Pledged Notes”: all promissory notes listed on Schedule 2 and all other promissory notes issued to or held by any Grantor.

“Pledged Stock”: all of the issued and outstanding shares of Capital Stock, whether certificated or uncertificated, of any Grantor’s direct Subsidiaries now or hereafter owned by any such Grantor and including the Capital Stock listed on Schedule 2 hereof (as amended or supplemented from time to time); provided that in no event shall Pledged Stock include any Excluded Assets.

“Proceeds”: all “proceeds” as such term is defined in Section 9-102(a)(64) of the UCC and, in any event, shall include, without limitation, all dividends or other income from any Investment Property constituting Collateral and all collections thereon or distributions or payments with respect thereto.

“Qualified ECP Guarantor”: in respect of any Specified Swap Obligation, each Guarantor that has total assets exceeding $10,000,000 at the time the relevant guaranty or grant of the relevant Lien becomes effective with respect to such Specified Swap Obligation or constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Receivable”: any right to payment for goods sold or leased or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including any Account).

“Rights to Payment”: any and all of any Grantor’s Accounts and any and all of any Grantor’s rights and claims to the payment or receipt of money or other forms of consideration of any kind in, to and under or with respect to its Chattel Paper, Documents, General Intangibles, Instruments, Investment Property, Letter-of-Credit Rights, Proceeds and Supporting Obligations.

“Secured Obligations”: collectively, the “Obligations”, as such term is defined in the Credit Agreement; provided, however, that “Secured Obligations” of a particular Grantor shall not include any Excluded Swap Obligation of such Grantor.
Secured Parties: the Administrative Agent, each Agent, the Issuing Lender, the Swing Line Lender, each Lender, each Bank Services Provider, and any Qualified Counterparty.

Software: (a) all computer programs, including source code and object code versions, (b) all data, databases and compilations of data, whether machine readable or otherwise, and (c) all documentation, training materials and configurations related to any of the foregoing.

Trademark License: any written agreement which (a) names a Grantor as licensor or licensee and (b) grants to such Grantor any right to use any Trademark, including any such agreements referred to on Schedule 6.

Trademarks: (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, Internet domain names and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto, including, without limitation, any of the foregoing referred to on Schedule 6, and (b) the right to obtain all renewals thereof in each case owned by a Grantor.

1.2 Other Definitional Provisions. The rules of interpretation set forth in Section 1.2 of the Credit Agreement are by this reference incorporated herein, mutatis mutandis, as if set forth herein in full.

SECTION 2. GUARANTEE.

2.1 Guarantee.

(a) The Borrower and each other Grantor that executes this Agreement as of the date hereof, together with each Subsidiary of the Borrower or any such Grantor who accedes to this Agreement as a Grantor after the date hereof pursuant to Section 6.12 of the Credit Agreement (each a “Guarantor” and, collectively, the “Guarantors”), hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Administrative Agent, for the ratable benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower and the other Loan Parties when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations. In furtherance of the foregoing, and without limiting the generality thereof, each Guarantor agrees as follows:

(i) each Guarantor’s liability hereunder shall be the immediate, direct, and primary obligation of such Guarantor and shall not be contingent upon the Administrative Agent’s or any Secured Party’s exercise or enforcement of any remedy it or they may have against the Borrower, any other Guarantor, any other Person, or all or any portion of the Collateral; and

(ii) the Administrative Agent may enforce this guaranty notwithstanding the existence of any dispute between any of the Secured Parties and the Borrower or any other Guarantor with respect to the existence of any Event of Default.

(b) Anything herein or in any other Loan Document to the contrary notwithstanding, the maximum liability of each Guarantor hereunder and under the other Loan Documents shall in no event exceed the amount which can be guaranteed by such Guarantor under applicable federal and state laws relating to the insolvency of debtors (after giving effect to the right of contribution established in Section 2.2).
(c) Each Guarantor agrees that the Secured Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of the Administrative Agent or any other Secured Party hereunder.

(d) The guarantee contained in this Section 2 shall remain in full force and effect until the Discharge of Obligations, notwithstanding that from time to time during the term of the Credit Agreement the outstanding amount of the Secured Obligations may be zero.

(e) No payment made by the Borrower, any Guarantor, any other guarantor or any other Person or received or collected by the Administrative Agent or any other Secured Party from the Borrower, any Guarantor, any other guarantor or any other Person by virtue of any action or proceeding or any setoff or appropriation or application at any time or from time to time in reduction of or in payment of the Secured Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Secured Obligations or any payment received or collected from such Guarantor in respect of the Secured Obligations), remain liable for the Secured Obligations up to the maximum liability of such Guarantor hereunder until the Discharge of Obligations.

(f) Any term or provision of this Agreement or any other Loan Document to the contrary notwithstanding, the maximum aggregate amount for which any Guarantor shall be liable hereunder shall not exceed the maximum amount for which such Guarantor can be liable without rendering this Agreement or any other Loan Document, as it relates to such Guarantor, subject to avoidance under applicable Requirements of Law relating to fraudulent conveyance or fraudulent transfer (including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act and Section 548 of Title 11 of the United States Code or any applicable provisions of comparable Requirements of Law) (collectively, “Fraudulent Transfer Laws”). Any analysis of the provisions of this Agreement for purposes of Fraudulent Transfer Laws shall take into account the right of contribution established in Section 2.2, and, for purposes of such analysis, give effect to any discharge of intercompany debt as a result of any payment made under the Agreement.

2.2 Right of Contribution. If in connection with any payment made by any Guarantor hereunder any rights of contribution arise in favor of such Guarantor against one or more other Guarantors, such rights of contribution shall be subject to the terms and conditions of Section 2.3. The provisions of this Section 2.2 shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent and the other Secured Parties, and each Guarantor shall remain liable to the Administrative Agent and the other Secured Parties for the full amount guaranteed by such Guarantor hereunder.

2.3 No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any setoff or application of funds of any Guarantor by the Administrative Agent or any other Secured Party, no Guarantor shall be entitled to be subrogated to any of the rights of the Administrative Agent or any other Secured Party against the Borrower or any other Guarantor or any Collateral or guarantee or right of offset held by the Administrative Agent or any other Secured Party for the payment of the Secured Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, in each case, until the Discharge of Obligations. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time prior to the Discharge of Obligations, such amount shall be held by such Guarantor in trust for the Administrative Agent and the other Secured Parties, shall be segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Administrative Agent in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Administrative Agent, if required), to be applied in such order as set forth in Section 6.5 hereof irrespective of the occurrence or the continuance of any Event of Default.
2.4 Amendments, etc. with respect to the Secured Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Secured Obligations made by the Administrative Agent or any other Secured Party may be rescinded by the Administrative Agent or such Secured Party and any of the Secured Obligations continued, and the Secured Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the Administrative Agent or any other Secured Party, and the Credit Agreement, the other Loan Documents, the Specified Swap Agreements and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Administrative Agent (or the Required Lenders or all of the Lenders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by the Administrative Agent or any other Secured Party for the payment of the Secured Obligations may be sold, exchanged, waived, surrendered or released. Neither the Administrative Agent nor any other Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Secured Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.5 Guarantee Absolute and Unconditional; Guarantor Waivers; Guarantor Consents. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Secured Obligations and notice of or proof of reliance by the Administrative Agent or any other Secured Party upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived in reliance upon the guarantee contained in this Section 2; and all dealings between the Borrower and any of the Guarantors on the one hand, and the Administrative Agent and the other Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor further waives:

(a) diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or any of the other Guarantors with respect to the Secured Obligations;

(b) any right to require any Secured Party to marshal assets in favor of the Borrower, such Guarantor, any other Guarantor or any other Person, to proceed against the Borrower, any other Guarantor or any other Person, to proceed against or exhaust any of the Collateral, to give notice of the terms, time and place of any public or private sale of personal property security constituting the Collateral or other collateral for the Secured Obligations or to comply with any other provisions of Section 9-611 of the UCC (or any equivalent provision of any other applicable law) or to pursue any other right, remedy, power or privilege of any Secured Party whatsoever;

(c) the defense of the statute of limitations in any action hereunder or for the collection or performance of the Secured Obligations;

(d) any defense arising by reason of any lack of corporate or other authority or any other defense of the Borrower, such Guarantor or any other Person;

(e) any defense based upon the Administrative Agent’s or any Secured Party’s errors or omissions in the administration of the Secured Obligations;

(f) any rights to set-offs and counterclaims;
(g) any defense based upon an election of remedies (including, if available, an election to proceed by nonjudicial foreclosure) which destroys or impairs the subrogation rights of such Guarantor or the right of such Guarantor to proceed against the Borrower or any other obligor of the Secured Obligations for reimbursement; and

(b) without limiting the generality of the foregoing, to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by applicable law that limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Agreement.

Each Guarantor understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (i) the validity or enforceability of the Credit Agreement or any other Loan Document, any of the Secured Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by the Administrative Agent or any other Secured Party, (ii) any defense, setoff or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Borrower or any other Person against the Administrative Agent or any other Secured Party, (iii) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower and the Guarantors for the Secured Obligations, or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance, (iv) any Insolvency Proceeding with respect to the Borrower, any Guarantor or any other Person, (v) any merger, acquisition, consolidation or change in structure of the Borrower, any Guarantor or any other Person, or any sale, lease, transfer or other disposition of any or all of the assets or Voting Stock of the Borrower, any Guarantor or any other Person, (vi) any assignment or other transfer, in whole or in part, of any Secured Party’s interests in and rights under this Guaranty or the other Loan Documents, including any Secured Party’s right to receive payment of the Secured Obligations, or any assignment or other transfer, in whole or in part, of any Secured Party’s interests in and to any of the Collateral, (vi) any Secured Party’s vote, claim, distribution, election, acceptance, action or inaction in any Insolvency Proceeding related to any of the Secured Obligations, and (vii) any other guaranty, whether by such Guarantor or any other Person, of all or any part of the Secured Obligations or any other indebtedness, obligations or liabilities of any Guarantor to any Secured Party.

When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, the Administrative Agent or any other Secured Party may, but shall be under no obligation to make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Secured Obligations or any right of offset with respect thereto. Any failure by the Administrative Agent or any other Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Administrative Agent or any other Secured Party against any Guarantor. For the purposes hereof “demand” shall include the commencement and continuance of any legal proceedings.

Each Guarantor acknowledges that all or any portion of the Secured Obligations may now or hereafter be secured by a Lien or Liens upon real property owned or leased by the Borrower or any Guarantor and evidenced by certain documents including, without limitation, deeds of trust and assignments of rents. Any Secured Party may, pursuant to the terms of said documents and applicable law, foreclose under all or any portion of one or more of said Liens by means of judicial or nonjudicial sale or sales. Each Guarantor agrees that any Secured Party may exercise whatever rights and remedies it may have with respect to said real property security, all without affecting the liability of any Guarantor hereunder, except to the extent such...
Secured Party realizes payment by such action or proceeding. No election to proceed in one form of action or against any party, or on any obligation shall constitute a waiver of any Secured Party’s right to proceed in any other form of action or against any Guarantor or any other Person, or diminish the liability of any Guarantor, or affect the right of such Secured Party to proceed against any Guarantor for any deficiency, except to the extent such Secured Party realizes payment by such action, notwithstanding the effect of such action upon any Guarantor’s rights of subrogation, reimbursement or indemnity, if any, against the Borrower, any Guarantor, or any other Person.

Each Guarantor further unconditionally consents and agrees that, without notice to or further assent from any Guarantor: (a) the principal amount of the Secured Obligations may be increased or decreased and additional indebtedness or obligations of the Borrower or any other Persons under the Loan Documents may be incurred, by one or more amendments, modifications, renewals or extensions of any Loan Document or otherwise; (b) the time, manner, place or terms of any payment under any Loan Document may be extended or changed, including by an increase or decrease in the interest rate on any Secured Obligation or any fee or other amount payable under such Loan Document, by an amendment, modification or renewal of any Loan Document or otherwise; (c) the time for the Borrower’s (or any other Loan Party’s) performance of or compliance with any term, covenant or agreement on its part to be performed or observed under any Loan Document may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to, all in such manner and upon such terms as the Administrative Agent may deem proper; (d) in addition to the Collateral, the Secured Parties may take and hold other security (legal or equitable) of any kind, at any time, as collateral for the Secured Obligations, and may, from time to time, in whole or in part, exchange, sell, surrender, release, subordinate, modify, waive, rescind, compromise or extend such security and may permit or consent to any such action or the result of any such action, and may apply such security and direct the order or manner of sale thereof; (e) any Secured Party may discharge or release, in whole or in part, any other Guarantor or any other Loan Party or other Person liable for the payment and performance of all or any part of the Secured Obligations, and may permit or consent to any such action or any result of such action, and shall not be obligated to demand or enforce payment upon any of the Collateral, nor shall any Secured Party be liable to any Guarantor for any failure to collect or enforce payment or performance of the Secured Obligations from any Person or to realize upon the Collateral, and (f) the Secured Parties may request and accept other guaranties of the Secured Obligations and any other indebtedness, obligations or liabilities of the Borrower or any other Loan Party to any Secured Party and may, from time to time, in whole or in part, surrender, release, subordinate, modify, waive, rescind, compromise or extend any such guaranty and may permit or consent to any such action or the result of any such action; in each case of clauses (a) through (f), as the Secured Parties may deem advisable, based on their reasonable good faith business judgment, and without impairing, abridging, releasing or affecting this Agreement.

2.6 Reinstatement. The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Secured Obligations is rescinded or must otherwise be restored or returned by the Administrative Agent or any other Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any such Guarantor or any substantial part of its respective property, or otherwise, all as though such payments had not been made.

2.7 Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to the Administrative Agent without setoff or counterclaim in Dollars at the Funding Office.

2.8 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Agreement in respect of Secured Obligations under Specified Swap Agreements (provided that, each Qualified ECP Guarantor shall only be liable under this Section 2.8 for the maximum amount of such liability that can be hereby incurred.
without rendering its obligations under this Section 2.8 or otherwise under this Agreement, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 2.8 shall remain in full force and effect until the Secured Obligations have been paid in full in cash and all Commitments have terminated. Each Qualified ECP Guarantor intends that this Section 2.8 constitute, and this Section 2.8 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.”

SECTION 3. GRANT OF SECURITY INTEREST.

3.1 Grant of Security Interests. Each Grantor hereby grants to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in all of the following property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest and wherever located (collectively, the “Collateral”), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations (whether now existing or arising hereafter):

(a) all Accounts;
(b) all Chattel Paper;
(c) all Commercial Tort Claims, including all Commercial Tort Claims described on Schedule 8;
(d) all Deposit Accounts; (e) all Documents;
(f) all Equipment;
(g) all Farm Products (as defined in the UCC);
(h) all Fixtures;
(i) all General Intangibles;
(j) all Goods;
(k) Intellectual Property;
(l) all Instruments;
(m) all Inventory;
(n) all Investment Property (including all Pledged Collateral);
(o) all Letter-of-Credit Rights, Letters of Credit (as defined in the UCC), Promissory Notes (as defined in the UCC), and Drafts (as defined in the UCC);
(p) all Securities Accounts; (q) all Money;

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(r) all Books and records pertaining to the Collateral;

(s) all other property not otherwise described above; and

(t) to the extent not otherwise included, all Proceeds, Supporting Obligations and products of any and all of the foregoing; provided, however, that notwithstanding anything to the contrary contained in clauses (a) through (s) above, the security interests created by this Agreement shall not extend to, and the term “Collateral” (including all of the individual items comprising Collateral) shall not include, any Excluded Assets.

3.2 Grantors Remains Liable. Anything herein to the contrary notwithstanding, (a) each Grantor shall remain liable under any contracts, agreements and other documents included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Administrative Agent of any of the rights granted to the Administrative Agent hereunder shall not release any Grantor from any of its duties or obligations under any such contracts, agreements and other documents included in the Collateral, and (c) neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any such contracts, agreements and other documents included in the Collateral by reason of this Agreement, nor shall the Administrative Agent or any other Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Collateral hereunder.

3.3 Perfection and Priority.

(a) Financing Statements. Pursuant to any applicable law, each Grantor authorizes the Administrative Agent (and its counsel and its agents) to file or record at any time and from time to time any financing statements and other filing or recording documents or instruments with respect to the Collateral and each Grantor shall execute and deliver to the Administrative Agent and each Grantor hereby authorizes the Administrative Agent (and its counsel and its agents) to file (with or without the signature of such Grantor) at any time and from time to time, all amendments to financing statements, continuation financing statements, termination statements, assignments, fixture filings, affidavits, reports notices and all other documents and instruments, in such form and in such offices as the Administrative Agent or the Required Lenders determine appropriate to perfect and continue perfected, maintain the priority of or provide notice of the Administrative Agent’s security interest in the Collateral under and to accomplish the purposes of this Agreement. Each Grantor authorizes the Administrative Agent to use the collateral description “all personal property, whether now owned or hereafter acquired” or any other similar collateral description in any such financing statements. Each Grantor hereby ratifies and authorizes the filing by the Administrative Agent (and its counsel and its agents) of any financing statement with respect to the Collateral made prior to the date hereof.

(b) Filing of Financing Statements. Each Grantor shall deliver to the Administrative Agent, from time to time, such completed UCC-1 financing statements for filing or recording in the appropriate filing offices as may be reasonably requested by the Administrative Agent.

(c) Transfer of Security Interest Other Than by Delivery. If for any reason Pledged Collateral cannot be delivered to or for the account of the Administrative Agent as provided in Section 5.6(b), each applicable Grantor shall promptly take such other steps as may be necessary or as shall be reasonably requested from time to time by the Administrative Agent to effect a transfer of a perfected first priority security interest in and pledge of the Pledged Collateral to the Administrative Agent for itself and on behalf of and for the ratable benefit of the other Secured Parties pursuant to the UCC. To the extent practicable, each such Grantor shall thereafter deliver the Pledged Collateral to or for the account of the Administrative Agent as provided in Section 5.6(b).
(d) Intellectual Property.

(i) Each Grantor shall, in addition to executing and delivering this Agreement, take such other action as may be necessary, or as the Administrative Agent may reasonably request, to perfect the Administrative Agent’s security interest in such Grantor’s Intellectual Property.

(ii) In the case of any Collateral (whether now owned or hereafter acquired) consisting of issued United States Patents and applications therefor, each Grantor shall execute and deliver to the Collateral Agent a Patent Security Agreement in substantially the form of Annex 5 hereto (or a supplement thereto) covering all such Patents in appropriate form for recordation with the United States Patent and Trademark Office with respect to the security interest of the Collateral Agent; provided that following the date hereof, within forty-five (45) days of the end of each quarter, such Grantor shall file such Patent Security Agreement for any issued United States Patents or applications therefor acquired by such Grantor in such quarter.

(iii) In the case of any Collateral (whether now owned or hereafter acquired) consisting of registered United States Trademarks and applications therefor, each Grantor shall execute and deliver to the Collateral Agent a Trademark Security Agreement in substantially the form of Annex 4 hereto (or a supplement thereto) covering all such Trademarks in appropriate form for recordation with the United States Patent and Trademark Office with respect to the security interest of the Collateral Agent; provided that following the date hereof, within forty-five (45) days of the end of each quarter, such Grantor shall file such Trademark Security Agreement for any issued United States Trademarks or applications therefor acquired by such Grantor in such quarter.

(iv) In the case of any Collateral (whether now owned or hereafter acquired) consisting of registered United States Copyrights and exclusive Copyright Licenses in respect of registered United States Copyrights for which any Grantor is the licensee, each Grantor execute and deliver to the Collateral Agent a Copyright Security Agreement in substantially the form of Annex 3 hereto (or a supplement thereto) covering all such Copyrights and Copyright Licenses in appropriate form for recordation with the United States Copyright Office with respect to the security interest of the Collateral Agent; provided that following the date hereof, within forty-five (45) days of the end of each quarter, such Grantor shall file such Copyright Security Agreement for any issued United States Copyrights or such Copyright Licenses acquired by such Grantor in such quarter.

(e) Bailees. Any Person (other than the Administrative Agent) at any time and from time to time holding all or any portion of the Collateral shall be deemed to, and shall, hold the Collateral as the agent of, and as pledge holder for, the Administrative Agent. At any time and from time to time, the Administrative Agent may give notice to any such Person holding all or any portion of the Collateral that such Person is holding the Collateral as the agent and bailee of, and as pledge holder for, the Administrative Agent, and obtain such Person’s written acknowledgment thereof. Without limiting the generality of the foregoing, each Grantor will join with the Administrative Agent in notifying any Person who has possession of any Collateral of the Administrative Agent’s security interest therein and shall use commercially reasonable efforts to obtain an acknowledgment from such Person that it is holding the Collateral for the benefit of the Administrative Agent.

(f) Control. Each Grantor will cooperate with the Administrative Agent in obtaining control (as defined in the UCC) of Collateral consisting of any Deposit Accounts, Electronic Chattel Paper, Investment Property, Securities Accounts or Letter-of-Credit Rights, including delivery of control agreements, as the Administrative Agent may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the Administrative Agent’s security interest in such Collateral.

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(g) Additional Subsidiaries. In the event that any Grantor acquires rights in any Subsidiary after the date hereof, it shall deliver to the Administrative Agent a completed pledge supplement, substantially in the form of Annex 2 (the "Pledge Supplement"), together with all schedules thereto, reflecting the pledge of the Capital Stock of such new Subsidiary (except to the extent such Capital Stock consists of Excluded Assets). Notwithstanding the foregoing, it is understood and agreed that the security interest of the Administrative Agent shall attach to the Pledged Collateral related to such Subsidiary immediately upon any Grantor’s acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a Pledge Supplement.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In addition to the representations and warranties of the Grantors set forth in the Credit Agreement, which are incorporated herein by this reference, and to induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower thereunder, each Grantor hereby represents and warrants to the Administrative Agent and each other Secured Party that:

4.1 Title; No Other Liens. Except for the Liens permitted to exist on the Collateral by Section 7.3 of the Credit Agreement, such Grantor owns each item of the Collateral in which a Lien is granted by it free and clear of any and all Liens and other claims of others. No financing statement, fixture filing or other public notice with respect to all or any part of the Collateral is on file or of record or will be filed in any public office, except such as have been filed as permitted by the Credit Agreement.

4.2 Perfected Liens. The security interests granted to the Administrative Agent pursuant to this Agreement (a) upon completion of the filings and other actions specified on Schedule 3 (which, in the case of all filings and other documents referred to on said Schedule, have been delivered to the Administrative Agent in completed and duly (if applicable) executed form) will constitute valid perfected security interests in all of the Collateral in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, as collateral security for the Secured Obligations, enforceable in accordance with the terms hereof against any creditors of any Grantor and any Persons purporting to purchase any Collateral from any Grantor, and (ii) are prior to all other Liens on the Collateral (except (x), in the case of Collateral other than Pledged Stock, Liens permitted by Section 7.3 of the Credit Agreement which are non-consensual permitted Liens, permitted purchase money Liens, or the interests of lessors under capital leases and (y) as otherwise provided in the Intercreditor Agreement). Unless an Event of Default has occurred and is continuing, each Grantor has the right to remove the Fixtures in which such Grantor has an interest within the meaning of Section 9-334(f)(2) of the UCC.

4.3 Jurisdiction of Organization; Chief Executive Office and Locations of Books. On the date hereof, such Grantor’s jurisdiction of organization, identification number from the jurisdiction of organization (if any), and the location of such Grantor’s chief executive office or sole place of business, as the case may be, are specified on Schedule 4. All locations where Books pertaining to the Rights to Payment of such Grantor are kept, including all equipment necessary for accessing such Books and the names and addresses of all service bureaus, computer or data processing companies and other Persons keeping any Books or collecting Rights to Payment for such Grantor, are set forth in Schedule 4.

4.4 Inventory and Equipment. On the date hereof, (a) the Inventory and (b) the Equipment (other than goods which are then in-transit) are kept at the locations listed on Schedule 5.

4.5 Farm Products. None of the Collateral constitutes, or is the Proceeds of, Farm Products.

4.6 Pledged Collateral. (a) All of the Pledged Stock held by such Grantor has been duly and validly issued, and is fully paid and non-assessable, subject in the case of Pledged Stock constituting partnership interests or limited liability company membership interests to future assessments required under
applicable law and any applicable partnership or operating agreement, (b) such Grantor is or, in the case of any such additional Pledged Collateral will be, the legal record and beneficial owner thereof, (c) in the case of Pledged Stock of a Subsidiary of such Grantor or Pledged Collateral of such Grantor constituting Instruments issued by a Subsidiary of such Grantor, there are no restrictions on the transferability of such Pledged Collateral or such additional Pledged Collateral to the Administrative Agent or with respect to the foreclosure, transfer or disposition thereof by the Administrative Agent, except as provided under applicable securities or “Blue Sky” laws, (d) the Pledged Stock pledged by such Grantor constitute all of the issued and outstanding shares of Capital Stock of each Issuer owned by such Grantor (except for Excluded Assets), and such Grantor owns no securities convertible into or exchangeable for any shares of Capital Stock of any such Issuer that do not constitute Pledged Stock hereunder, (e) any and all Pledged Collateral Agreements which affect or relate to the voting or giving of written consents with respect to any of the Pledged Stock pledged by such Grantor have been disclosed to the Administrative Agent, and (f) as to each such Pledged Collateral Agreement relating to the Pledged Stock pledged by such Grantor, (i) to the best knowledge of such Grantor, such Pledged Collateral Agreement contains the entire agreement between the parties thereto with respect to the subject matter thereof and is in full force and effect in accordance with its terms, (ii) to the best knowledge of such Grantor party thereto, there exists no material violation or material default under any such Pledged Collateral Agreement by such Grantor or the other parties thereto, and (iii) such Grantor has not knowingly waived or released any of its material rights under or otherwise consented to a material departure from the terms and provisions of any such Pledged Collateral Agreement.

4.7 Investment Accounts. Schedule 2 sets forth under the headings “Securities Accounts” and “Commodity Accounts”, respectively, all of the Securities Accounts and Commodity Accounts in which such Grantor has an interest. Except as disclosed to the Administrative Agent, such Grantor is the sole entitlement holder of each such Securities Account and Commodity Account, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Administrative Agent) having “control” (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or Commodity Account or any securities or other property credited thereto;

(a) Schedule 2 sets forth under the heading “Deposit Accounts” all of the Deposit Accounts in which such Grantor has an interest and, except as otherwise disclosed to the Administrative Agent, such Grantor is the sole account holder of each such Deposit Account and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Administrative Agent) having either sole dominion and control (within the meaning of common law) or “control” (within the meaning of Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account or any money or other property deposited therein; and

(b) In each case to the extent requested by the Administrative Agent or as otherwise required under the terms of this Agreement or any other Loan Document, such Grantor has taken all actions necessary or desirable to: (i) establish the Administrative Agent’s “control” (within the meanings of Sections 8-106 and 9-106 of the UCC) over any Certificated Securities (as defined in Section 9-102 of the UCC); (ii) establish the Administrative Agent’s “control” (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Investment Accounts constituting Securities Accounts, Commodity Accounts, Securities Entitlements or Uncertificated Securities (each as defined in Section 9-102 of the UCC); (iii) establish the Administrative Agent’s “control” (within the meaning of Section 9-104 of the UCC) over all Deposit Accounts; and (iv) deliver all Instruments (as defined in Section 9-102 of the UCC) to the Administrative Agent to the extent required hereunder.

4.8 Receivables. No amount payable to such Grantor under or in connection with any Receivable or other Right to Payment is evidenced by any Instrument (other than checks, drafts or other Instruments that will be promptly deposited in an Investment Account) or Chattel Paper which has not been delivered to the Administrative Agent. None of the account debtors or other obligors in respect of any Receivable in excess of $100,000 in the aggregate is the government of the United States or any agency or instrumentality thereof.
4.9 Intellectual Property.

(a) Schedule 6 lists (i) all registrations and applications for each Grantor’s Intellectual Property (including each Grantor’s registered Copyrights, Patents, Trademarks and all applications therefor) (ii) all Copyright Licenses, Patent Licenses and Trademark Licenses other than any non-exclusive Licenses entered into in the ordinary course of business of which the loss of which or default under could not reasonably be expected to have a Material Adverse Effect, in each case of clause (i) and (ii) owned by such Grantor in its own name on the date hereof.

(b) To the knowledge of the Grantors, each Grantor owns, is licensed to use, or otherwise has valid rights to use all Intellectual Property necessary for the conduct of its business as currently conducted, except as could not reasonably be expected to have a Material Adverse Effect. The use of such Intellectual Property by each Grantor does not, to the knowledge of the Grantors, infringe on the rights of any Person in any material respect where such infringement could reasonably be expected to have a Material Adverse Effect. No material claim has been asserted in writing and is pending against any Grantor by any Person challenging or questioning such Grantor’s use of any Intellectual Property or the validity or effectiveness of such Grantor’s Intellectual Property (other than routine office actions in the course of prosecution of applications to register Intellectual Property), nor does any Grantor know of any valid basis for any such claim, unless such claim could not reasonably be expected to have a Material Adverse Effect.

(c) No holding, decision or judgment (other than routine office actions in the course of prosecution of applications to register Intellectual Property) has been rendered by any Governmental Authority which would limit, cancel or question the validity of, or such Grantor’s rights in, any of any Grantor’s Intellectual Property or Intellectual Property License in any respect that could reasonably be expected to have a Material Adverse Effect.

(d) No action or proceeding (other than routine office actions in the course of prosecution of applications to register Intellectual Property) is pending, or, to the knowledge of such Grantor, threatened, on the date hereof (i) seeking to limit, cancel or question the validity of any material Intellectual Property owned by a Grantor or such Grantor’s ownership interest therein, and (ii) which, if adversely determined, could have a Material Adverse Effect.

4.10 Instruments. (i) Such Grantor has not previously assigned any interest in any Instruments (including but not limited to the Pledged Notes) held by such Grantor (other than such interests as will be released on or before the date hereof), and (ii) no Person other than such Grantor owns an interest in such Instruments (whether as joint holders, participants or otherwise).

4.11 Letter of Credit Rights. Such Grantor does not have any Letter-of-Credit Rights having a potential value in excess of $100,000 except as set forth in Schedule 7 or as have been notified to the Administrative Agent in accordance with Section 5.22.

4.12 Commercial Tort Claims. Such Grantor does not have any Commercial Tort Claims having a potential value in excess of $100,000 except as set forth in Schedule 8 or as have been notified to the Administrative Agent in accordance with Section 5.21.
SECTION 5. COVENANTS

In addition to the covenants of the Grantors set forth in the Credit Agreement, which are incorporated herein by this reference, each Grantor covenants and agrees with the Administrative Agent and the other Secured Parties that, from and after the date of this Agreement until the Discharge of Obligations:

5.1 Delivery of Instruments, Certificated Securities and Chattel Paper. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument (other than checks, drafts or other Instruments that will be promptly deposited in an Investment Account), Certificated Security or Chattel Paper evidencing an amount in excess of $100,000, such Instrument, Certificated Security or Chattel Paper shall be promptly delivered to the Administrative Agent, duly indorsed in a manner satisfactory to the Administrative Agent, to be held as Collateral pursuant to this Agreement.

5.2 Maintenance of Insurance.

(a) Such Grantor will maintain, with financially sound and reputable companies, insurance policies (i) insuring such Grantor’s and its Subsidiaries’ assets wherever located, covering liabilities, losses or damages as are customarily are insured against by other Persons engaged in same or similar businesses and similarly situated and located, including insuring the Inventory and Equipment against loss by fire, explosion, theft and such other casualties as may be reasonably satisfactory to the Agents and (ii) insuring such Grantor, the Administrative Agent and the other Secured Parties against liability for personal injury and property damage relating to such Inventory and Equipment and other assets, such policies to be in such form and amounts and having such coverage, in amount, adequacy, and scope as may be reasonably satisfactory to the Administrative Agent and the other Secured Parties. If the Borrower or its Subsidiaries fails to maintain such insurance, Administrative Agent may arrange for such insurance, but at the Borrower’s expense and without any responsibility on any Agent’s part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims.

(b) All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by the Administrative Agent of written notice thereof, (ii) name the Administrative Agent as an additional insured party or loss payee, (iii) to the extent available on commercially reasonable terms, and if reasonably requested by the Administrative Agent, include a breach of warranty clause, and (iv) be reasonably satisfactory in all other respects to the Administrative Agent.

(c) The Borrower shall deliver to the Administrative Agent a report of a reputable insurance broker with respect to such insurance substantially concurrently with each delivery of the Borrower’s audited annual financial statements and such supplemental reports with respect thereto as any Agent may from time to time reasonably request.

5.3 Maintenance of Perfected Security Interest; Further Documentation.

(a) Such Grantor shall maintain the security interests of the Administrative Agent (for the benefit of the Secured Parties) created by this Agreement as perfected security interests having at least the priority described in Section 4.2 and shall defend such security interests against the claims and demands of all Persons whomsoever, subject to the rights of such Grantor under the Loan Documents to dispose of the Collateral.

(b) Such Grantor will furnish to the Administrative Agent from time to time statements and schedules further identifying and describing the assets and property of such Grantor and such other reports in connection therewith as the Administrative Agent may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Administrative Agent, and at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Administrative Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (i) filing any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any
jurisdiction with respect to the security interests created hereby and (ii) in the case of Investment Property, Investment Accounts, Letter-of-Credit Rights and any other relevant Collateral, taking any actions necessary to enable the Administrative Agent to obtain “control” (within the meaning of the UCC) with respect thereto to the extent required hereunder.

5.4 Changes in Locations, Name, Etc. Such Grantor will not change its jurisdiction of organization from the jurisdiction of organization (if any) referred to in Section 4.3. Such Grantor will not, except upon 15 days’ (or such shorter period as may be agreed to by the Administrative Agent) prior written notice to the Administrative Agent and delivery to the Administrative Agent of (a) all additional executed financing statements and other documents reasonably requested by the Administrative Agent to maintain the validity, perfection and priority of the security interests provided for herein, and (b) if applicable, a written supplement to Schedule 4 showing the relevant new location of chief executive office or sole place of business, as appropriate:

(i) change its identification number from the number (if any) or the location of its chief executive office or sole place of business, as appropriate, from that referred to in Section 4.3;

(ii) change its name; or

(iii) locate any Collateral with a value in excess of $250,000 in any state or other jurisdiction other than those in which such Grantor operates as of the Closing Date.

5.5 Notices. Such Grantor will advise the Administrative Agent promptly, in reasonable detail, of:

(a) any Lien (other than Liens permitted under Section 7.3 of the Credit Agreement) on any of the Collateral; and

(b) the occurrence of any other event which, in the good faith judgment of the Borrower, could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the security interests created hereby.

5.6 Instruments; Investment Property.

(a) (i) Immediately notify the Administrative Agent if any Grantor shall have obtained or otherwise acquired any Instruments, Documents, Chattel Paper, certificated securities with respect to any Investment Property, any letters of credit, and all other Rights to Payment held by such Grantor at any time evidenced by promissory notes, trade acceptances or other instruments, in each case, with a value in excess of $100,000 individually or $250,000 in the aggregate, and (ii) upon the request of the Administrative Agent, such Grantor will (A) immediately deliver to the Administrative Agent, or an agent designated by it, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all such Instruments, Documents, Chattel Paper and certificated securities with respect to any Investment Property held by such Grantor, all letters of credit of such Grantor, and all other Rights to Payment held by such Grantor at any time evidenced by promissory notes, trade acceptances or other instruments, and (B) provide such notice, obtain such acknowledgments and take all such other action, with respect to any Chattel Paper, Documents and Letter-of-Credit Rights held by such Grantor, as the Administrative Agent shall reasonably specify.

(b) If such Grantor shall become entitled to receive or shall receive any certificate (including any certificate representing a dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the Capital Stock of any Issuer, whether in addition to, in substitution of, as a conversion
of, or in exchange for, any Pledged Collateral, or otherwise in respect thereof, such Grantor shall accept the same as the agent of the Administrative Agent and the other Secured Parties, hold the same in trust for the Administrative Agent and the other Secured Parties and deliver the same forthwith to the Administrative Agent in the exact form received, duly indorsed by such Grantor to the Administrative Agent, if required, together with an undated stock power covering such certificate duly executed in blank by such Grantor and with, if the Administrative Agent so requests, signature guaranteed, to be held by the Administrative Agent, subject to the terms hereof, as additional collateral security for the Secured Obligations; provided that in no event shall this Section 5.6(b) apply to any Excluded Assets. Any sums paid upon or in respect of the Investment Property upon the liquidation or dissolution of any Issuer shall, unless otherwise subject to a perfected security interest in favor of the Administrative Agent, be paid over to the Administrative Agent to be held by it hereunder as additional collateral security for the Secured Obligations, and in case any distribution of capital shall be made on or in respect of the Investment Property or any property shall be distributed upon or with respect to the Investment Property pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected security interest in favor of the Administrative Agent, be delivered to the Administrative Agent to be held by it hereunder as additional collateral security for the Secured Obligations. If any sums of money or property so paid or distributed in respect of such Investment Property shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to the Administrative Agent, unless otherwise subject to a perfected security interest in favor of the Administrative Agent, hold such money or property in trust for the Administrative Agent and the other Secured Parties, segregated from other funds of such Grantor, as additional collateral security for the Secured Obligations.

(c) In the case of any Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Capital Stock issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Administrative Agent promptly in writing of the occurrence of any of the events described in Section 5.6(a) and (b) with respect to the Pledged Collateral issued by it and (iii) the terms of Sections 6.3(c) and 6.7 shall apply to it, mutatis mutandis, with respect to all actions that may be required of it pursuant to Section 6.3(c) or 6.7 with respect to the Capital Stock issued by it.

5.7 Securities Accounts; Deposit Accounts

(a) With respect to any Securities Account, such Grantor shall cause any applicable securities intermediary maintaining such Securities Account to show on its books that the Administrative Agent is the entitlement holder with respect to such Securities Account, and, if requested by the Administrative Agent, promptly cause such securities intermediary to enter into an agreement in form and substance satisfactory to the Administrative Agent with respect to such Securities Account pursuant to which such securities intermediary shall agree to comply with the Administrative Agent’s “entitlement orders” without further consent by such Grantor, as requested by the Administrative Agent; and

(b) with respect to any Deposit Account, such Grantor shall enter into and shall promptly cause the depositary institution maintaining such account to enter into an agreement in form and substance reasonably satisfactory to the Administrative Agent pursuant to which the Administrative Agent shall be granted “control” (within the meaning of Section 9-104 of the UCC) over such Deposit Account.

(c) The Administrative Agent agrees that it will not communicate “entitlement orders” with respect to the Deposit Accounts and Securities Accounts of the Grantors during a Streamline Period.

(d) Such Grantor shall give the Administrative Agent immediate notice of the establishment of any new Deposit Account and of any new Securities Account established by such Grantor with respect to any Investment Property held by such Grantor.
5.8 Intellectual Property

(a) Such Grantor (either itself or through licensees) will, except as permitted by Section 7.5 of the Credit Agreement, (i) continue to use each material Trademark owned by such Grantor in order to maintain such material Trademark in full force free from any claim of abandonment for non-use, (ii) maintain as in the past the quality of products and services offered under each such material Trademark to the extent required to maintain the validity and enforceability of such material Trademark, (iii) use each such material Trademark with the appropriate notice of registration and all other notices and legends required by applicable United States Requirements of Law, and (iv) not (and not knowingly permit any licensee or sublicensee thereof to) knowingly do any act or knowingly omit to do any act whereby any such material Trademark may become invalidated or impaired in any way.

(b) Except as permitted by Section 7.5 of the Credit Agreement, such Grantor will not (and will not knowingly permit any licensee of any material Patent to) knowingly do any act, or omit to do any act, whereby any such material Patent owned by such Grantor may become forfeited, abandoned or dedicated to the public, provided that the applicable Grantor, in its good faith business judgment, may decide to abandon any pending application for a Patent or dedicate it to the public.

(c) Except as permitted by Section 7.5 of the Credit Agreement, such Grantor will not (and will not knowingly permit any licensee of any material Copyright to) knowingly do any act or knowingly omit to do any act whereby any such material Copyrights owned by such Grantor may become invalidated or otherwise impaired. Except as permitted by Section 7.5 of the Credit Agreement, such Grantor will not (either itself or through licensees) knowingly do any act whereby any material portion of such Copyrights may fall into the public domain.

(d) Such Grantor (either itself or through licensees) will not knowingly use any Intellectual Property, Copyright License, Patent License or Trademark License to infringe the intellectual property rights of any other Person, except as could not reasonably be expected to have a Material Adverse Effect.

(e) Such Grantor will notify the Administrative Agent promptly if it knows that any application or registration relating to any Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country but excluding routine office actions in the course of prosecution of applications to register Intellectual Property) regarding such Grantor’s ownership of, or the validity of, any Intellectual Property or such Grantor’s right to register the same or to own and maintain the same, to the extent the loss or invalidity of such Intellectual Property or adverse determination or development could reasonably be expected to have a Material Adverse Effect.

(f) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Patent or Trademark with the United States Patent and Trademark Office or any similar office or agency in any other country or political subdivision thereof, such Grantor shall report (i) the initial application to and (ii) the corresponding grant, if any, of the Patent or Trademark from the United States Patent and Trademark Office to the Administrative Agent, each within 45 days after the last day of the fiscal quarter in which such filing or grant, as applicable, occurs. Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Copyright with the United States Copyright Office, such Grantor shall report the filing of the initial application to the Administrative Agent within 45 days after the last day of the fiscal quarter in which such filing occurs.
(g) Such Grantor will take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each material application filed by or on behalf of any Grantor (and to obtain the relevant registration) and to maintain each corresponding registration of the material United States Intellectual Property of such Grantor (to the extent it remains material), including filing of applications for renewal, affidavits of use and affidavits of incontestability.

(h) In the event that any material Intellectual Property of a Grantor is infringed, misappropriated or diluted by a third party, such Grantor shall take such actions as such Grantor shall deem appropriate under the circumstances to protect such Intellectual Property.

5.9 Receivables. Other than in the ordinary course of business consistent with its past practice, such Grantor will not (a) grant any extension of the time of payment of any Receivable, (b) compromise or settle any Receivable for less than the full amount thereof, (c) release, wholly or partially, any Person liable for the payment of any Receivable, (d) allow any credit or discount whatsoever on any Receivable or (e) amend, supplement or modify any Receivable in any manner that could adversely affect the value thereof.

5.10 Defense of Collateral. Grantors will appear in and defend any action, suit or proceeding which may affect to a material extent its title to, or right or interest in, or the Administrative Agent’s right or interest in, any material portion of the Collateral.

5.11 Preservation of Collateral. Grantors will do and perform all reasonable acts that may be necessary and appropriate to maintain, preserve and protect the Collateral.

5.12 Compliance with Laws, Etc. Such Grantor will comply in all material respects with all laws, regulations and ordinances, and all policies of insurance, relating in a material way to the possession, operation, maintenance and control of the Collateral, except where the failure to so comply would not reasonably be expected to result in a Material Adverse Effect or result in a violation of Section 5.2 hereof.

5.13 Location of Books and Chief Executive Office. Such Grantor will: (a) keep all Books pertaining to the Rights to Payment of such Grantor at the locations set forth in Schedule 4; and (b) give at least 15 days’ prior written notice to the Administrative Agent of any changes in any location where Books pertaining to the Rights to Payment of such Grantor are kept, including any change of name or address of any service bureau, computer or data processing company or other Person preparing or maintaining any such Books or collecting Rights to Payment for such Grantor.

5.14 Location of Collateral. Such Grantor will: (a) keep the Collateral held by such Grantor at the locations set forth in Schedule 5 or at such other locations as may be disclosed in writing to the Administrative Agent pursuant to clause (b) and will not remove any such Collateral from such locations (other than in connection with sales of Inventory in the ordinary course of such Grantor’s business, the movement of Collateral as part of such Grantor’s supply chain and in the ordinary course of such Grantor’s business, other dispositions permitted by Section 7.5 of the Credit Agreement and movements of Collateral from one disclosed location to another disclosed location within the United States), except upon at least 15 days’ prior written notice of any removal to the Administrative Agent; and (b) give the Administrative Agent at least 15 days’ prior written notice of any change in the locations set forth in Schedule 5.

5.15 Maintenance of Records. Such Grantor will keep separate, accurate and complete Books with respect to Collateral held by such Grantor, disclosing the Administrative Agent’s security interest hereunder.
5.16 Disposition of Collateral. Such Grantor will not surrender or lose possession of (other than to the Administrative Agent), sell, lease, rent, or otherwise dispose of or transfer any of the Collateral held by such Grantor or any right or interest therein, except to the extent permitted by the Loan Documents.

5.17 Liens. Such Grantor will keep the Collateral held by such Grantor free of all Liens except Liens permitted under Section 7.3 of the Credit Agreement.

5.18 Expenses. Such Grantor will pay all expenses of protecting, storing, warehousing, insuring, handling and shipping the Collateral held by such Grantor, to the extent the failure to pay any such expenses could reasonably be expected to materially and adversely affect the value of the Collateral.

5.19 Leased Premises; Collateral Held by Warehouseman, Bailee, Etc. At any Agent’s request, such Grantor will use commercially reasonable efforts to obtain from each Person from whom such Grantor leases any premises, and from each other Person at whose premises any Collateral held by such Grantor is at any time present (including any bailee, warehouseman or similar Person), any such collateral access, subordination, landlord waiver, bailment, consent and estoppel agreements as the Administrative Agent may reasonably require, in form and substance satisfactory to the Agents.

5.20 Chattel Paper. Such Grantor will not create any Chattel Paper without placing a legend on such Chattel Paper acceptable to the Administrative Agent indicating that the Administrative Agent has a security interest in such Chattel Paper. Such Grantor will give the Administrative Agent immediate notice if such Grantor at any time holds or acquires an interest in any Chattel Paper, including any Electronic Chattel Paper and shall comply, in all respects, with the provisions of Section 5.1 hereof.

5.21 Commercial Tort Claims. Such Grantor will give the Administrative Agent prompt notice if such Grantor shall at any time hold or acquire any Commercial Tort Claim with a potential value in excess of $100,000, and unless otherwise consented by the Agents, such Grantor shall enter into a supplement to this Agreement granting to the Administrative Agent a Lien in such Commercial Tort Claim.

5.22 Letter-of-Credit Rights. Such Grantor will give the Administrative Agent prompt notice if such Grantor shall at any time hold or acquire any Letter-of-Credit Rights with a potential value in excess of $100,000.

5.23 Shareholder Agreements and Other Agreements.

(a) Such Grantor shall comply with all of its obligations under any shareholders agreement, operating agreement, partnership agreement, voting trust, proxy agreement or other agreement or understanding (collectively, the “Pledged Collateral Agreements”) to which it is a party and shall enforce all of its rights thereunder, except, with respect to any such Pledged Collateral Agreement relating to any Pledged Collateral issued by a Person other than a Subsidiary of a Grantor, to the extent the failure to enforce any such rights could reasonably be expected to materially and adversely affect the value of the Pledged Collateral to which any such Pledged Collateral Agreement relates.

(b) Such Grantor agrees that no Pledged Stock (i) shall be dealt in or traded on any securities exchange or in any securities market, (ii) shall constitute an investment company security, or (iii) shall be held by such Grantor in a Securities Account.

(c) Other than as expressly permitted by the Credit Agreement, such Grantor shall not vote to enable or take any other action to amend or terminate, or waive compliance with any of the terms of, any such Pledged Collateral Agreement, certificate or articles of incorporation, bylaws or other organizational documents in any way that materially and adversely affects the validity, perfection or priority of the Administrative Agent’s security interest therein.
SECTION 6. REMEDIAL PROVISIONS

Each Grantor covenants and agrees with the Administrative Agent and the other Secured Parties that, from and after the date of this Agreement until the Discharge of Obligations:

6.1 Certain Matters Relating to Receivables

At the Administrative Agent’s request, after the occurrence and during the continuance of an Event of Default, each Grantor shall deliver to the Administrative Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Receivables, including, without limitation, all original orders, invoices and shipping receipts.

6.2 Communications with Obligors; Grantors Remain Liable

(a) The Administrative Agent in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables to verify with them to the Administrative Agent’s satisfaction the existence, amount and terms of any Receivables.

(b) Upon the request of the Administrative Agent, at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on the Receivables that the Receivables have been assigned to the Administrative Agent for the ratable benefit of the Secured Parties and that payments in respect thereof shall be made directly to the Administrative Agent.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Receivables to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by the Administrative Agent or any Lender of any payment relating thereto, nor shall the Administrative Agent nor any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

6.3 Investment Property

(a) Unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given written notice to the relevant Grantor of the Administrative Agent’s intent to exercise its corresponding rights pursuant to Section 6.3(b), each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Collateral and all payments made in respect of the Pledged Notes to the extent not prohibited by the Credit Agreement, and to exercise all voting and corporate or other organizational rights with respect to the Investment Property of such Grantor; provided, however, that no vote shall be cast or corporate or other organizational right exercised or other action taken which, in the Administrative Agent’s reasonable discretion, would materially impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document.

(b) If an Event of Default shall occur and be continuing and the Administrative Agent shall give notice of its intent to exercise such rights to the relevant Grantor or Grantors, (i) the Administrative
Agent shall have the right (A) to receive any and all cash dividends, payments or other Proceeds paid in respect of the Investment Property (including the Pledged Collateral) of any or all of the Grantors and make application thereof to the Secured Obligations in the order set forth in Section 6.5, and (B) to exchange uncertificated Pledged Collateral for certificated Pledged Collateral and to exchange certificated Pledged Collateral for certificates of larger or smaller denominations, for any purpose consistent with this Agreement (in each case to the extent such exchanges are permitted under the applicable Pledged Collateral Agreements or otherwise agreed upon by the Issuer of such Pledged Collateral), and (ii) any and all of such Investment Property shall be registered in the name of the Administrative Agent or its nominee, and the Administrative Agent or its nominee may thereafter exercise (x) all voting, corporate and other rights pertaining to such Investment Property at any meeting of shareholders of the relevant Issuer or Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of such Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other organizational structure of any Issuer, or upon the exercise by any Grantor or the Administrative Agent of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of such Investment Property with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as the Administrative Agent may determine), all without liability except to account for property actually received by it, but the Administrative Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Pledged Collateral or Pledged Notes pledged by such Grantor hereunder to (i) comply with any instruction received by it from the Administrative Agent in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, pay any dividends or other payments with respect to the Pledged Collateral or, as applicable, the Pledged Notes directly to the Administrative Agent.

(d) If a Streamline Period is not continuing at any date of determination, the Administrative Agent shall have the right to apply the balance from any Deposit Account or Securities Account or instruct the bank or securities intermediary, as applicable, at which any Deposit Account or Securities Account is maintained to pay the balance of any Deposit Account or Securities Account to or for the benefit of the Administrative Agent, for application in to the Obligations in accordance with the Credit Agreement.

6.4 Proceeds to be Turned Over To Administrative Agent. In addition to the rights of the Administrative Agent and the other Secured Parties specified in Section 6.1 of this Agreement and Section 6.3 of the Credit Agreement with respect to payments of Receivables, if a Streamline Period is not in effect at any date determination, all Proceeds received by any Grantor consisting of cash, checks, Cash Equivalents and other near-cash items shall be held by such Grantor in trust for the Administrative Agent and the other Secured Parties, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Administrative Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Administrative Agent, if required). All Proceeds received by the Administrative Agent hereunder shall be held by the Administrative Agent in a Collateral Account over which it maintains control, within the meaning of the UCC. All Proceeds while held by the Administrative Agent in a Collateral Account (or by such Grantor in trust for the Administrative Agent and the other Secured Parties) shall continue to be held as collateral security for all the Secured Obligations and shall not constitute payment thereof until applied as provided in Section 6.5.
6.5 **Application of Proceeds.** If a Streamline Period is not in effect at any date of determination, at any time at the Administrative Agent’s election, the Administrative Agent may apply all or any part of Proceeds constituting Collateral, whether or not held in any Collateral Account, in payment of the Secured Obligations in accordance with the Credit Agreement.

6.6 **Code and Other Remedies.** If an Event of Default shall occur and be continuing, the Administrative Agent, on behalf of the Secured Parties, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the UCC or any other applicable law or in equity. Without limiting the generality of the foregoing, the Administrative Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker’s board or office of the Administrative Agent or any other Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Administrative Agent or any other Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each Grantor further agrees, at the Administrative Agent’s request, to assemble the Collateral and make it available to the Administrative Agent at places which the Administrative Agent shall reasonably select, whether at such Grantor’s premises or elsewhere. The Administrative Agent shall apply the net proceeds of any action taken by it pursuant to this Section 6.6, in accordance with the provisions of Section 6.5, only after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Administrative Agent and the other Secured Parties hereunder, including, without limitation, reasonable attorneys’ fees and disbursements, to the payment in whole or in part of the Secured Obligations, in such order as is contemplated by Section 8.3 of the Credit Agreement, and only after such application and after the payment by the Administrative Agent of any other amount required by any provision of law, including Section 9-615(a)(3) of the UCC, but only to the extent of the surplus, if any, owing to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against the Administrative Agent or any other Secured Party arising out of the exercise by any of them of any rights hereunder, except to the extent caused by the gross negligence or willful misconduct of the Administrative Agent or such Secured Party or their respective agents. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition. Administrative Agent may, in addition to other rights and remedies provided for herein, in the other Loan Documents, or otherwise available to it under applicable law and without the requirement of notice to or upon any Grantor or any other Person (which notice is hereby expressly waived to the maximum extent permitted by the Code or any other applicable law), (i) with respect to any Grantor’s Deposit Accounts in which Administrative Agent’s Liens are perfected by control under Section 9-104 or any other section of the UCC, instruct the bank maintaining such Deposit Account for the applicable Grantor to pay the balance of such Deposit Account to or for the benefit of the Administrative Agent, and (ii) with respect to any Grantor’s Securities Accounts in which Administrative Agent’s Liens are perfected by control under Section 9-106 or any other section of the UCC, instruct the securities intermediary maintaining such Securities Account for the applicable Grantor to (A) transfer any cash in such Securities Account to or for the benefit of Administrative Agent, or (B) liquidate any financial assets in such Securities Account that are customarily sold on a recognized market and transfer the cash proceeds thereof to or for the benefit of Administrative Agent. Each Grantor hereby acknowledges that the Secured Obligations arise out of
a commercial transaction, and agrees that if an Event of Default shall occur and be continuing Administrative Agent shall have the right to an immediate writ of possession without notice of a hearing. Administrative Agent shall have the right to the appointment of a receiver for the properties and assets of each Grantor, and each Grantor hereby consents to such rights and such appointment and hereby waives any objection such Grantor may have thereto or the right to have a bond or other security posted by Administrative Agent.

6.7 Pledged Stock.

(a) The Administrative Agent may exercise in respect of the Pledged Stock, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Pledged Stock), and the Administrative Agent may also in its sole discretion, in accordance with applicable law, without notice except as specified below, sell the Pledged Stock or any part thereof in one or more parcels at public or private sale, at any exchange or broker’s board or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Administrative Agent may deem commercially reasonable, irrespective of the impact of any such sales on the market price of the Pledged Stock. The Administrative Agent may be the purchaser of any or all of the Pledged Stock at any such sale and the Administrative Agent shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Pledged Stock sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Pledged Stock payable by the Administrative Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten days’ notice to Borrower of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Administrative Agent shall not be obligated to make any sale of Pledged Stock regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor hereby waives any claims against the Administrative Agent arising by reason of the fact that the price at which any Pledged Stock may have been sold at a private sale was less than the price which might have been obtained at a public sale, even if the Administrative Agent accepts the first offer received and does not offer such Pledged Stock to more than one offeree. If the proceeds of any sale or other disposition of the Pledged Stock are insufficient to pay all the Secured Obligations, each Grantor shall be liable for the deficiency and the fees of any attorneys employed by the Administrative Agent to collect such deficiency.

(b) Each Grantor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Stock, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof, provided that if the Administrative Agent resorts to such a private sale, it shall use its good faith judgment in carrying out such sale. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. Subject to its compliance with state securities laws applicable to private sales, the Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Stock for the period of time necessary to permit the Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.
(c) Each Grantor agrees to use commercially reasonable efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged Stock pursuant to this Section 6.7 valid and binding and in compliance with any applicable Requirement of Law. Each Grantor further agrees that a breach of any of the covenants contained in this Section 6.7 will cause irreparable injury to the Administrative Agent and the other Secured Parties, that the Administrative Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 6.7 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred under the Credit Agreement.

6.8 [Intentionally Omitted]

6.9 Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Secured Obligations and the fees and disbursements of any attorneys employed by the Administrative Agent or any other Secured Party to collect such deficiency.

SECTION 7. THE ADMINISTRATIVE AGENT

Each Grantor covenants and agrees with the Administrative Agent and the other Secured Parties that:

7.1 Administrative Agent’s Appointment as Attorney-in-Fact, etc.

Each Grantor hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Administrative Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due under any Receivable or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property, (A) execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Administrative Agent may request to evidence the Administrative Agent’s and the other Secured Parties’ security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby, and (B) use any Intellectual Property or IP Licenses of such Grantor, including but not limited to any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, or advertising matter, in preparing for sale, advertising for sale, or selling inventory or other Collateral and to collect any amounts due under accounts, contracts or other Collateral of such Grantor;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;
execute, in connection with any sale provided for in Section 6.6 or 6.7, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (A) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct; (B) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (C) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (D) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (E) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (F) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Administrative Agent may deem appropriate; (G) assign any Copyright, Patent or Trademark (along with the goodwill of the business to which any such Copyright, Patent or Trademark pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Administrative Agent shall in its sole discretion determine; and (H) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and do, at the Administrative Agent’s option and such Grantor’s expense, at any time, or from time to time, all acts and things which the Administrative Agent deems necessary to protect, preserve or realize upon the Collateral and the Administrative Agent’s and the other Secured Parties’ security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 7.1(a) to the contrary notwithstanding, the Administrative Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Administrative Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The expenses of the Administrative Agent incurred in connection with actions undertaken as provided in this Section 7.1, together with interest thereon at a rate per annum equal to the highest rate per annum at which interest would then be payable on any category of past due ABR Loans under the Credit Agreement, from the date of payment by the Administrative Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Administrative Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2 Duty of Administrative Agent. The Administrative Agent’s sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with it in the same manner as the Administrative Agent deals with similar property for its own account. Neither the Administrative Agent, any other Secured Party nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Administrative Agent and the other Secured Parties hereunder are solely to protect the Administrative Agent’s and the other Secured
Parties’ interests in the Collateral and shall not impose any duty upon the Administrative Agent or any other Secured Party to exercise any such powers. The Administrative Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

7.3 Authority of Administrative Agent. Each Grantor acknowledges that the rights and responsibilities of the Administrative Agent under this Agreement with respect to any action taken by the Administrative Agent or the exercise or non-exercise by the Administrative Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Administrative Agent and the other Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Administrative Agent and the Grantors, the Administrative Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

SECTION 8. MISCELLANEOUS

8.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.1 of the Credit Agreement.

8.2 Notices. All notices, requests and demands to or upon the Administrative Agent or any Grantor hereunder shall be effected in the manner provided for in Section 10.2 of the Credit Agreement; provided that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 1.

8.3 No Waiver by Course of Conduct; Cumulative Remedies. Neither the Administrative Agent nor any other Secured Party shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default, as applicable. No failure to exercise, nor any delay in exercising, on the part of the Administrative Agent or any other Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Administrative Agent or any other Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Administrative Agent or such other Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4 Enforcement Expenses; Indemnification. 

(a) Each Guarantor agrees to pay or reimburse the Administrative Agent and each other Secured Party for all its costs and expenses incurred in collecting against such Guarantor under the guaranty contained in Section 2 of this Agreement or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Guarantor is a party, including the fees and disbursements of counsel (including the allocated fees and expenses of in-house counsel) to the Administrative Agent and of counsel to each other Secured Party.

(b) Each Guarantor agrees to pay, and to save the Administrative Agent and each other Secured Party harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

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(c) Each Guarantor agrees to pay, and to save the Administrative Agent and each other Secured Party harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Borrower would be required to do so pursuant to the Credit Agreement.

(d) The agreements in this Section 8.4 shall survive repayment of the Secured Obligations and any other amounts payable under the Credit Agreement and the other Loan Documents.

8.5 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Administrative Agent and each other Secured Party and their respective successors and assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent.

8.6 Set Off. Each Grantor hereby irrevocably authorizes the Administrative Agent and each other Secured Party and any Affiliate thereof at any time and from time to time after the occurrence and during the continuance of an Event of Default, without notice to such Grantor or any other Grantor, any such notice being expressly waived by each Grantor, to setoff and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by the Administrative Agent or such Secured Party or such Affiliate to or for the credit or the account of such Grantor, or any part thereof in such amounts as the Administrative Agent or such Secured Party may elect, against and on account of the Secured Obligations and liabilities of such Grantor then due to the Administrative Agent or such Secured Party hereunder and under the other Loan Documents and claims of every nature and description of the Administrative Agent or such Secured Party against such Grantor, in any currency, whether arising hereunder, under the Credit Agreement, any other Loan Document or otherwise, as the Administrative Agent or such Secured Party may elect, whether or not the Administrative Agent or any other Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. The rights of the Administrative Agent and each other Secured Party under this Section 8.6 are in addition to other rights and remedies (including, without limitation, other rights of setoff) which the Administrative Agent or such other Secured Party may have.

8.7 Counterparts. This Agreement may be executed and delivered by one or more of the parties to this Agreement on any number of separate counterparts (including delivery by facsimile and/or electronic mail), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

8.8 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.9 Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.10 Integration. This Agreement and the other Loan Documents represent the agreement of the Grantors, the Administrative Agent and the other Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any other Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.
8.11 **GOVERNING LAW.** THE VALIDITY OF THIS AGREEMENT (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR RELATED HERETO SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. This Section 8.11 shall survive the Discharge of Obligations.

8.12 **Submission to Jurisdiction; Waivers.** Each Grantor hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of the State of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Grantor at its address referred to in Section 8.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction;

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 8.12 any special, exemplary, punitive or consequential damages; and

(f) acknowledged and agrees that Section 10.14(c) of the Credit Agreement is hereby incorporated by reference.

8.13 **Excluded Assets.** To ensure that a Lien and security interest is granted on assets or property otherwise excluded from Collateral under the definition of “Excluded Assets”, each Grantor shall, if reasonably requested by any Agent, use its commercially reasonable efforts to obtain any required Governmental Approvals or other consents from any Person with respect to any material license or material Equipment lease with such Person entered into by such Grantor that requires such Governmental Approval or consent as a condition to the creation by such Grantor of a Lien on any right, title or interest in such license or Equipment lease.

8.14 **Intellectual Property License.** For the sole purpose of enabling Administrative Agent to exercise rights and remedies under this this Agreement and the other Loan Documents (including, without limitation, in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, convey, transfer or grant options to purchase any Collateral) at such time as Administrative
Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to Administrative Agent, for the benefit of the Secured Parties, (i) an irrevocable, nonexclusive, worldwide license (exercisable without payment of royalty or other compensation to such Grantor), including in such license the right to sublicense (to the extent such sublicense is not subject to an enforceable restriction pursuant to a license agreement to which such Grantor is a party), use and practice any Intellectual Property and all Excluded Intellectual Property now owned or hereafter acquired by such Grantor or now or hereafter licensed to such Grantor and access to all media in which any of the licensed items may be recorded or stored and to all Software and programs used for the compilation or printout thereof (subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property now owned or hereafter acquired by the Grantors), and (ii) an irrevocable license (without payment of rent or other compensation to such Grantor) to use, operate and occupy all equipment and real property owned, operated, leased, subleased or otherwise occupied by such Grantor.

8.15 Acknowledgements. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) neither the Administrative Agent nor any other Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantors, on the one hand, and the Administrative Agent and the other Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among any of the Secured Parties or among the Grantors and any of the Secured Parties.

8.16 Additional Grantors. Each Subsidiary of a Grantor that is required to become a party to this Agreement pursuant to Section 6.12 of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of Annex 1 hereto.

8.17 Releases.

(a) Upon the Discharge of Obligations, the Collateral shall be released from the Liens in favor of the Administrative Agent and the other Secured Parties created hereby, this Agreement shall terminate with respect to the Administrative Agent and the other Secured Parties, and all obligations (other than those expressly stated to survive such termination) of each Grantor to the Administrative Agent or any other Secured Party hereunder shall terminate, all without delivery of any instrument or performance of any act by any party. At the sole expense of any Grantor following any such termination, the Administrative Agent shall promptly deliver such documents as such Grantor shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold, transferred or otherwise disposed of by any Grantor to a Person that is not a Grantor in a transaction permitted by Section 7 of the Credit Agreement, (a) such Collateral shall, upon such sale, transfer or disposition, automatically be released from the Liens created hereby on such Collateral, and (b) then the Administrative Agent, at the request and sole expense of such Grantor, shall promptly execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral, as applicable. At the request and sole expense of the Borrower, a Guarantor shall be released from its obligations hereunder in the

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event that all the Capital Stock of such Guarantor shall be sold, transferred or otherwise disposed of to a Person other than a Grantor in a transaction permitted by Section 7 of the Credit Agreement; provided that the Borrower shall have delivered to the Administrative Agent, at least ten days, or such shorter period as the Administrative Agent may agree, prior to the date of the proposed release, a written request for release identifying the relevant Guarantor and the terms of the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by the Borrower stating that such transaction is in compliance with terms and provisions of the Credit Agreement and the other Loan Documents.

8.18 WAIVER OF JURY TRIAL. EACH GRANTOR AND THE ADMINISTRATIVE AGENT EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

8.19 Amendment and Restatement of Existing Guarantee Agreement. This Agreement amends, restates, supersedes, and replaces in its entirety the Existing Guarantee Agreement. The security interest granted by each Grantor in the “Collateral” under and as defined in the Existing Guarantee Agreement continues without interruption under this Agreement and such security interest is hereby ratified and confirmed in all respects. Nothing contained herein shall be construed as a novation or termination of the obligations outstanding under the Existing Guarantee Agreement, which shall remain in all respects continuing and in full force and effect, except as modified hereby. Nothing express or implied in this Agreement shall be construed as a release or discharge of any Grantor under the Existing Guarantee Agreement.

8.20 Intercreditor Agreement. In the event of any inconsistency between the provisions of this Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall supersede the provisions of this Agreement. The Administrative Agent, for itself and on behalf of the other Secured Parties, acknowledges and agrees that any provision of this Agreement to the contrary notwithstanding, no Grantor shall be required to act or refrain from acting, and the Administrative Agent and Lenders will not knowingly direct any Grantor to take any action or omit to take any action, with respect to any Collateral in a manner that is inconsistent with the terms and provisions of the Intercreditor Agreement.

[remainder of page intentionally left blank]
IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

GRANTORS:

FITBIT, INC.
By: 
Name: 
Title: 

FITBIT INTERNATIONAL, LLC
By: 
Name: 
Title: 

Signature Page 1 to Guarantee and Collateral Agreement
Signature Page 2 to Guarantee and Collateral Agreement
<table>
<thead>
<tr>
<th>Guarantor</th>
<th>Notice Address</th>
</tr>
</thead>
</table>

Schedule 1
## SCHEDULE 2

### DESCRIPTION OF INVESTMENT PROPERTY

#### Pledged Stock:

<table>
<thead>
<tr>
<th>Grantor</th>
<th>Issuer</th>
<th>Class of Capital Stock</th>
<th>Certificate No.</th>
<th>No. of Shares /Units</th>
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#### Pledged Notes:

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<tr>
<th>Grantor</th>
<th>Issuer</th>
<th>Date of Issuance</th>
<th>Payee</th>
<th>Principal Amount</th>
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#### Securities Accounts:

<table>
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<th>Grantor</th>
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<th></th>
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</thead>
</table>

#### Commodity Accounts:

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<tr>
<th>Grantor</th>
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</tr>
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#### Deposit Accounts:

<table>
<thead>
<tr>
<th>Grantor</th>
<th>Depositary Bank</th>
<th>Address</th>
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</thead>
</table>

Schedule 2
1. UCC Financing Statement naming FitBit, Inc., as “debtor” and the Administrative Agent as “secured party” to be filed with the Secretary of State of the State of Delaware.

2. UCC Financing Statement naming FitBit International, LLC as “debtor” and the Administrative Agent as “secured party” to be filed with the Secretary of State of the State of Delaware.

Other Actions

[ ]

Schedule 3
<table>
<thead>
<tr>
<th>Grantor</th>
<th>Jurisdiction of Organization</th>
<th>Organizational Identification Number</th>
<th>Location of Chief Executive Office</th>
<th>Location of Books</th>
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</table>

Schedule 4
<table>
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<tr>
<th>Grantor</th>
<th>Address Location</th>
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Schedule 5
# SCHEDULE 6

## RIGHTS OF THE GRANTORS RELATING TO PATENTS

### Issued Patents of [NAME OF GRANTOR]

<table>
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<tr>
<th>Jurisdiction</th>
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<th>Issue Date</th>
<th>Inventor</th>
<th>Title</th>
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</table>

### Pending Patent Applications of [NAME OF GRANTOR]

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Serial No.</th>
<th>Filing Date</th>
<th>Inventor</th>
<th>Title</th>
</tr>
</thead>
</table>

### Issued Patents and Pending Patent Applications Licensed to [NAME OF GRANTOR]

[ ]

Schedule 6
### RIGHTS OF THE GRANTORS RELATING TO TRADEMARKS

#### Registered Trademarks of [NAME OF GRANTOR]

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Registration No.</th>
<th>Registration Date</th>
<th>Filing Date</th>
<th>Registered Owner</th>
<th>Mark</th>
</tr>
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</table>

#### Pending Trademark Applications of [NAME OF GRANTOR]

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Application No.</th>
<th>Filing Date</th>
<th>Applicant</th>
<th>Mark</th>
</tr>
</thead>
</table>

#### Registered Trademarks and Pending Trademark Applications Licensed to [NAME OF GRANTOR]

| [ ] | [ ] |

Schedule 6
## Rights of the Grantors Relating to Copyrights

### Registered Copyrights of [NAME OF GRANTOR]

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Registration No.</th>
<th>Registration Date</th>
<th>Work of Authorship</th>
</tr>
</thead>
</table>

### Pending Copyright Applications of [NAME OF GRANTOR]

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Application No.</th>
<th>Application Date</th>
<th>Work of Authorship</th>
</tr>
</thead>
</table>

### Registered Copyrights and Pending Copyright Applications Licensed to [NAME OF GRANTOR]

[ ]

Schedule 6
SCHEDULE 7

LETTER OF CREDIT RIGHTS

Schedule 7
ANNEX 1 TO 
GUARANTEE AND COLLATERAL AGREEMENT  
FORM OF  
ASSUMPTION AGREEMENT  

This ASSUMPTION AGREEMENT, dated as of [                    ], is executed and delivered by [                                        ] (the “Additional Grantor”), in favor of SILICON VALLEY BANK, as administrative agent (in such capacity, the “Administrative Agent”) for the banks and other financial institutions or entities (the “Lenders”) from time to time parties to that certain Amended and Restated Credit Agreement, dated as of August 13, 2014 (as amended, amended and restated, supplemented, restructured or otherwise modified, renewed or replaced from time to time, the “Credit Agreement”), by and among, among, among others, FITBIT, INC., a Delaware corporation (the “Borrower”), the Lenders party thereto and the Administrative Agent. All capitalized terms not defined herein shall have the respective meanings ascribed to such terms in such Credit Agreement.

WITNESSETH:

WHEREAS, in connection with the Credit Agreement, the Borrower and certain of its Affiliates (other than the Additional Grantor) have entered into that certain Amended and Restated Guarantee and Collateral Agreement, dated as of August 13, 2014, in favor of the Administrative Agent for the benefit of the Secured Parties defined therein (as amended, amended and restated, supplemented, restructured or otherwise modified, renewed or replaced from time to time, the “Guarantee and Collateral Agreement”);

WHEREAS, the Borrower is required, pursuant to Section 6.12 of the Credit Agreement to cause the Additional Grantor to become a party to the Guarantee and Collateral Agreement in order to grant in favor of the Administrative Agent (for the ratable benefit of the Lenders) the Liens and security interests therein specified and provide its guarantee of the Obligations as therein contemplated; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Guarantee and Collateral Agreement;

NOW, THEREFORE, IT IS AGREED:

1. Guarantee and Collateral Agreement. By executing and delivering this Assumption Agreement, the Additional Grantor, as provided in Section 8.14 of the Guarantee and Collateral Agreement, (a) hereby becomes a party to the Guarantee and Collateral Agreement as both a “Grantor” and a “Guarantor” thereunder with the same force and effect as if originally named therein as a Grantor and a Guarantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor and a Guarantor thereunder, (b) hereby grants to the Administrative Agent, for the benefit of the Secured Parties, as security for the Secured Obligations, a security interest in all of the Additional Grantor’s right, title and interest in any and to all Collateral of the Additional Grantor, in each case whether now owned or hereafter acquired or in which the Additional Grantor now has or hereafter acquires an interest and wherever the same may be located, but subject in all respects to the terms, conditions and exclusions set forth in the Guarantee and Collateral Agreement, and (c) jointly and severally, unconditionally and irrevocably, guarantees to the Administrative Agent, for the benefit of the Secured Parties and their respective successors, indorsers, transferees and assigns, the prompt and complete payment and performance by the Borrowers and the other Loan Parties when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations. The information set forth in Schedule 1 hereto is hereby added to the information set forth in the Schedules to the Guarantee and Collateral Agreement. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Section 4 of the Guarantee and Collateral Agreement (x) that is qualified by materiality is true and correct, and (y) that is not qualified by

Annex 1
materiality, is true and correct in all material respects, in each case, on and as the date hereof (after giving effect to this Assumption Agreement) as if made on and as of such date (except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty was true and correct in all material respects as of such earlier date).


3. Loan Document. This Assumption Agreement shall constitute a Loan Document under the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

By: 
Name: 
Title:

Annex 1
Supplement to Schedule 1
Supplement to Schedule 2
Supplement to Schedule 3
Supplement to Schedule 4
Supplement to Schedule 5
Supplement to Schedule 6
Supplement to Schedule 7
Supplement to Schedule 8

Annex 1
ANNEX 2 TO
GUARANTEE AND COLLATERAL AGREEMENT
FORM OF
PLEDGE SUPPLEMENT

To: Silicon Valley Bank, as Administrative Agent
Re: FITBIT, INC.
Date:

Ladies and Gentlemen:

This Pledge Supplement (this “Pledge Supplement”) is made and delivered pursuant to Section 3.3(g) of that certain Amended and Restated Guarantee and Collateral Agreement, dated as of August 13, 2014 (as amended, modified, renewed or extended from time to time, the “Guarantee and Collateral Agreement”), among each Grantor party thereto (each a “Grantor” and collectively, the “Grantors”), and Silicon Valley Bank (the “Administrative Agent”). All capitalized terms used in this Pledge Supplement and not otherwise defined herein shall have the meanings assigned to them in either the Guarantee and Collateral Agreement (as defined in the Guarantee and Collateral Agreement), as the context may require.

The undersigned, [insert name of Grantor], a [corporation, partnership, limited liability company, etc.], confirms and agrees that all Pledged Collateral of the undersigned, including the property described on the supplemental schedule attached hereto, shall be and become part of the Pledged Collateral and shall secure all Secured Obligations.

Schedule 2 to the Guarantee and Collateral Agreement is hereby amended by adding to such Schedule 2 the information set forth in the supplement attached hereto.

This Pledge Supplement shall constitute a Loan Document under the Credit Agreement.


IN WITNESS WHEREOF, the undersigned has executed this Pledge Supplement, as of the date first above written.

[NAME OF APPLICABLE GRANTOR]
By: __________________________
Name: _________________________
Title: __________________________

Annex 2
<table>
<thead>
<tr>
<th>Name of Subsidiary</th>
<th>Number of Units/Shares Owned</th>
<th>Certificate(s) Numbers</th>
<th>Date Issued</th>
<th>Class or Type of Shares</th>
</tr>
</thead>
</table>

Annex 1
This COPYRIGHT SECURITY AGREEMENT, dated as of [●] (as it may be amended, restated, supplemented or otherwise modified from time to time, this “Agreement”), is made by the entities identified as grantors on the signature pages hereto (collectively, the “Grantors”) in favor of SILICON VALLEY BANK (“SVB”), as administrative agent for the Secured Parties (in such capacity, together with its successors and permitted assigns, the “Administrative Agent”).

WHEREAS, reference is made to that certain Amended and Restated Credit Agreement, dated as of the date hereof (as amended, restated, supplemented or modified from time to time, the “Credit Agreement”), by and among (a) FitBit, Inc., as Borrower, (b) the Lenders party thereto, (c) the Administrative Agent, SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (d) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (e) SVB, SunTrust Robinson Humphrey, Inc. and Morgan Stanley, as co-lead arrangers and joint bookrunners; and

WHEREAS, the Grantors are party to an Amended and Restated Guarantee and Collateral Agreement, dated as of the date hereof (the “Security Agreement”), by and among each of the Grantors and the other grantors party thereto and the Administrative Agent pursuant to which the Grantors granted a security interest to the Administrative Agent in the Trademark Collateral (as defined below) and are required to execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Administrative Agent as follows:

SECTION 1. Defined Terms

Unless otherwise defined or stated herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest

SECTION 2.1 Grant of Security. Each Grantor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a security interest in and continuing lien on all of such Grantor’s right, title and interest in, to and under the following, in each case whether now owned or existing or hereafter acquired, developed, created or arising and wherever located (collectively, the “Copyright Collateral”):

all United States, and foreign copyrights (whether or not the underlying works of authorship have been published), including but not limited to copyrights in software and all rights in and to databases, all designs (including but not limited to industrial designs, Protected Designs and Community designs), and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, as well as all moral rights, reversionary interests, and termination rights, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, the registrations and applications listed or required to be listed in Schedule A attached hereto, (ii) all extensions and renewals thereof, (iii) the right to sue or otherwise recover for any past, present and future infringement or other violation thereof, (iv) all Proceeds of the foregoing, including, without limitation, license fees, royalties,
income, payments, claims, damages and proceeds of suit now or hereafter due and/or payable with respect thereto, and (v) all other rights of any kind accruing thereunder or pertaining thereto throughout the world; and

any and all agreements, licenses and covenants providing for the granting of any exclusive right to such Grantor in or to any registered Copyright including, without limitation, each agreement required to be listed in Schedule A attached hereto, and the right to sue or otherwise recover for past, present and future infringement or other violation or impairment thereof, including the right to receive all Proceeds therefrom, including without limitation license fees, royalties, income, payments, claims, damages and proceeds of suit, now or hereafter due and/or payable with respect thereto.

SECTION 2.2 Certain Limited Exclusions. Notwithstanding anything herein to the contrary, in no event shall the Copyright Collateral include or the security interest granted under Section 2.1 hereof attach to any Excluded Assets. Each Grantor hereby represents and warrants that Schedule A does not contain any Excluded Assets.

SECTION 3. Security Agreement

The security interest granted pursuant to this Agreement is granted in conjunction with the security interest granted to the Administrative Agent for the Secured Parties pursuant to the Security Agreement, and the Grantors hereby acknowledge and affirm that the rights and remedies of the Administrative Agent with respect to the security interest in the Copyright Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Termination

Upon the payment in full of all Obligations, the cancellation or termination of the Commitments and the cancellation, expiration, posting of backstop letters of credit or cash collateralization of all outstanding Letters of Credit satisfactory to the Issuing Bank of such Letters of Credit, the security interest granted hereby shall automatically terminate hereunder and of record and all rights to the Copyright Collateral shall revert to the Grantors. Upon any such termination the Administrative Agent shall, at the Grantors’ expense, execute and deliver to the Grantors or otherwise authorize the filing of such documents as the Grantors shall reasonably request to evidence such termination.

SECTION 5. Governing Law

SECTION 6. Counterparts

This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

[Remainder of page intentionally left blank]

Annex 3
IN WITNESS WHEREOF, the parties have caused this Copyright Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.

GRANTOR:
FITBIT, INC.

By:  
Title:  

Annex 3
ADMINISTRATIVE AGENT:

SILICON VALLEY BANK

By: ____________________________
Title: __________________________
SCHEDULE A  
TO  
COPYRIGHT SECURITY AGREEMENT  
COPYRIGHT REGISTRATIONS AND APPLICATIONS  

Registrations  

<table>
<thead>
<tr>
<th>Title</th>
<th>Registration No.</th>
<th>Registration Date</th>
</tr>
</thead>
</table>

Applications  

<table>
<thead>
<tr>
<th>Title</th>
<th>Application No.</th>
<th>Filing Date</th>
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</table>

7
ANNEX 4 TO
GUARANTEE AND COLLATERAL AGREEMENT
FORM OF
TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT, dated as of [●] (as it may be amended, restated, supplemented or otherwise modified from time to time, this “Agreement”), is made by the entities identified as grantors on the signature pages hereto (collectively, the “Grantors”) in favor of SILICON VALLEY BANK (“SVB”), as administrative agent for the Secured Parties (in such capacity, together with its successors and permitted assigns, the “Administrative Agent”).

WHEREAS, reference is made to that certain Amended and Restated Credit Agreement, dated as of the date hereof (as amended, restated, supplemented or modified from time to time, the “Credit Agreement”), by and among (a) FitBit, Inc., as Borrower, (b) the Lenders party thereto, (c) the Administrative Agent, SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (d) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (e) SVB, SunTrust Robinson Humphrey, Inc. and Morgan Stanley, as co-lead arrangers and joint bookrunners; and

WHEREAS, the Grantors are party to an Amended and Restated Guarantee and Collateral Agreement, dated as of the date hereof (the “Security Agreement”), by and among each of the Grantors and the other grantors party thereto and the Administrative Agent pursuant to which the Grantors granted a security interest to the Administrative Agent in the Trademark Collateral (as defined below) and are required to execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Administrative Agent as follows:

SECTION 1. Defined Terms

Unless otherwise defined or stated herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral

SECTION 2.1 Grant of Security. Each Grantor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a security interest in and continuing lien on all of such Grantor’s right, title and interest in, to and under the following, in each case whether now owned or existing or hereafter acquired, developed, created or arising and wherever located (collectively, the “Trademark Collateral”):

all United States, and foreign trademarks, trade names, trade dress, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, whether or not registered, and with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, the registrations and applications listed or required to be listed in Schedule A attached hereto, (ii) all extensions or renewals of any of the foregoing, (iii) all of the goodwill of the business connected with the use of and symbolized by any of the foregoing, (iv) the right to sue or otherwise recover for any past, present and future infringement, dilution or other violation of any of the foregoing or for any injury to the related goodwill, (v) all
Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages, and proceeds of suit now or hereafter due and/or payable with respect thereto, and (vi) all other rights of any kind accruing thereunder or pertaining thereto throughout the world.

SECTION 2.2 Certain Limited Exclusions. Notwithstanding anything herein to the contrary, in no event shall the Trademark Collateral include or the security interest granted under Section 2.1 hereof attach to any Excluded Assets. Each Grantor hereby represents and warrants that Schedule A does not contain any Excluded Assets.

SECTION 3. Security Agreement

The security interest granted pursuant to this Agreement is granted in conjunction with the security interest granted to the Administrative Agent for the Secured Parties pursuant to the Security Agreement, and the Grantors hereby acknowledge and affirm that the rights and remedies of the Administrative Agent with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Termination

Upon the payment in full of all Obligations, the cancellation or termination of the Commitments and the cancellation, expiration, posting of backstop letters of credit or cash collateralization of all outstanding Letters of Credit satisfactory to the Issuing Bank of such Letters of Credit, the security interest granted hereby shall automatically terminate hereunder and of record and all rights to the Trademark Collateral shall revert to the Grantors. Upon any such termination the Administrative Agent shall, at the Grantors’ expense, execute and deliver to the Grantors or otherwise authorize the filing of such documents as the Grantors shall reasonably request to evidence such termination.

SECTION 5. Governing Law

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND ALL CLAIMS AND CONTROVERSIES ARISING OUT OF THE SUBJECT MATTER HEREOF WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF ANY OTHER LAW (OTHER THAN ANY MANDATORY PROVISIONS OF LAW RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OF THE SECURITY INTEREST).

SECTION 6. Counterparts

This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, the parties have caused this Trademark Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.

GRANTOR:
FITBIT, INC.

By:    
Title:  

Signature Page to Trademark Security Agreement
ADMINISTRATIVE AGENT:

SILICON VALLEY BANK

By: 
Title: 

Signature Page to Trademark Security Agreement
<table>
<thead>
<tr>
<th>Mark</th>
<th>Appl. No.</th>
<th>Appl. Date</th>
<th>Registration No.</th>
<th>Registration Date</th>
<th>Owner</th>
</tr>
</thead>
</table>

This PATENT SECURITY AGREEMENT, dated as of [●] (as it may be amended, restated, supplemented or otherwise modified from time to time, this “Agreement”), is made by the entities identified as grantors on the signature pages hereto (collectively, the “Grantors”) in favor of SILICON VALLEY BANK (“SVB”), as administrative agent for the Secured Parties (in such capacity, together with its successors and permitted assigns, the “Administrative Agent”).

WHEREAS, reference is made to that certain Amended and Restated Credit Agreement, dated as of the date hereof (as amended, restated, supplemented or modified from time to time, the “Credit Agreement”), by and among (a) FitBit, Inc., as Borrower, (b) the Lenders party thereto, (c) the Administrative Agent, SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (d) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (e) SVB, SunTrust Robinson Humphrey, Inc. and Morgan Stanley, as co-lead arrangers and joint bookrunners; and

WHEREAS, the Grantors are party to an Amended and Restated Guarantee and Collateral Agreement, dated as of the date hereof (the “Security Agreement”), by and among each of the Grantors and the other grantors party thereto and the Administrative Agent pursuant to which the Grantors granted a security interest to the Administrative Agent in the Patent Collateral (as defined below) and are required to execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Administrative Agent as follows:

SECTION 1. Defined Terms

Unless otherwise defined or stated herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest

SECTION 2.1 Grant of Security. Each Grantor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a security interest in and continuing lien on all of such Grantor’s right, title and interest in, to and under the following, in each case whether now owned or existing or hereafter acquired, developed, created or arising and wherever located (collectively, the “Patent Collateral”):

all United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including, but not limited to: (i) each patent and patent application listed or required to be listed in Schedule A attached hereto, (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (iii) all patentable inventions and improvements thereto, (iv) the right to sue or otherwise recover for any past, present and future infringement or other violation thereof, (v) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages, and proceeds of suit now or hereafter due and/or payable with respect thereto, and (vi) all other rights of any kind accruing thereunder or pertaining thereto throughout the world.
SECTION 2.2 Certain Limited Exclusions. Notwithstanding anything herein to the contrary, in no event shall the Patent Collateral include or the security interest granted under Section 2.1 hereof attach to any Excluded Assets. Each Grantor hereby represents and warrants that Schedule A does not contain any Excluded Assets.

SECTION 3. Security Agreement

The security interest granted pursuant to this Agreement is granted in conjunction with the security interest granted to the Administrative Agent for the Secured Parties pursuant to the Security Agreement, and the Grantors hereby acknowledge and affirm that the rights and remedies of the Administrative Agent with respect to the security interest in the Patent Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Termination

Upon the payment in full of all Obligations, the cancellation or termination of the Commitments and the cancellation, expiration, posting of backstop letters of credit or cash collateralization of all outstanding Letters of Credit satisfactory to the Issuing Bank of such Letters of Credit, the security interest granted hereby shall automatically terminate hereunder and of record and all rights to the Patent Collateral shall revert to the Grantors. Upon any such termination the Administrative Agent shall, at the Grantors’ expense, execute and deliver to the Grantors or otherwise authorize the filing of such documents as the Grantors shall reasonably request to evidence such termination.

SECTION 5. Governing Law

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND ALL CLAIMS AND CONTROVERSIES ARISING OUT OF THE SUBJECT MATTER HEREOF WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF ANY OTHER LAW (OTHER THAN ANY MANDATORY PROVISIONS OF LAW RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OF THE SECURITY INTEREST).

SECTION 6. Counterparts

This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, the parties have caused this Patent Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.

GRANTOR:
FITBIT, INC.

By:  
Title:  

[SIGNATURE PAGE TO PATENT SECURITY AGREEMENT]
ADMINISTRATIVE AGENT:

SILICON VALLEY BANK

By:  
Title:  

______________________________
### SCHEDULE A

**to**

**PATENT SECURITY AGREEMENT**

**PATENTS AND PATENT APPLICATIONS**

|--------|--------|-----------|------------|------------|-----------|---------------|

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ii
FORM OF COMPLIANCE CERTIFICATE

FITBIT, INC.

Date:                      , 201

This Compliance Certificate is delivered pursuant to Section 6.2(b)(ii) of that certain Amended and Restated Credit Agreement, dated as of August 13, 2014 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “Credit Agreement”), among (a) FitBit, Inc., a Delaware corporation (the “Borrower”), (b) the Lenders party thereto, (c) Silicon Valley Bank (“SVB”), as administrative agent (in such capacity, the “Administrative Agent”), (d) SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (e) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (f) SVB, SunTrust Robinson Humphrey, Inc., and Morgan Stanley, as co-lead arrangers and joint bookrunners. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

The undersigned, a duly authorized and acting Responsible Officer of the Borrower, hereby certifies, in his/her capacity as an officer of the Borrower, and not in any personal capacity, as follows:

I have reviewed and am familiar with the contents of this Compliance Certificate.

I have reviewed the terms of the Credit Agreement and the other Loan Documents and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and condition of the Borrower and its Subsidiaries during the accounting period covered by the financial statements attached hereto as Attachment 1 (the “Financial Statements”). Except as set forth on Attachment 2, such review did not disclose the existence during or at the end of the accounting period covered by the Financial Statements, and I have no knowledge of the existence as of the date of this Compliance Certificate, of any condition or event which constitutes a Default or an Event of Default.

Attached hereto as Attachment 3 are the computations showing compliance with the covenants set forth in Section 7.1 of the Credit Agreement.

To the extent not previously disclosed to the Administrative Agent, attached hereto as Attachment 4 is a description of any change in the jurisdiction of organization of any Loan Party.

To the extent not previously disclosed to the Administrative Agent, attached hereto as Attachment 5 is a list of any patents, registered trademarks or registered copyrights issued to or acquired by any Loan Party since the date of the most recent report delivered.

[After giving after giving pro forma effect to the Increase and the use of proceeds thereof on the date hereof, the Borrower has satisfied the requirements set forth in Section 2.12(b)(v) of the Credit Agreement. Attached hereto as Attachment 6 are calculations demonstrating compliance with the requirements of Section 2.12(b)(v) of the Credit Agreement.] 1

[Remainder of page intentionally left blank; signature page follows]

1 For use in connection with an Increase.

Exhibit B
IN WITNESS WHEREOF, I have executed this Compliance Certificate as of the date first written above.

FITBIT, INC.

By: ____________________________
Name: __________________________
Title: __________________________
[Attach Financial Statements]

Attachment 1
Except as set forth below, no Default or Event of Default has occurred. [If a Default or Event of Default has occurred, the following describes the nature of the Default or Event of Default in reasonable detail and the steps, if any, being taken or contemplated by the Borrower to be taken on account thereof.]
Preliminary Note to Compliance Certificate Calculations

I. Section 7.1(a) — Consolidated Fixed Charge Coverage Ratio

The information described in this Section I is as of [ ], [ ] (the “Statement Date”), and pertains to the Subject Period defined below, as applicable.

A. Consolidated EBITDA for the Subject Period: 2

(“Subject Period” means the four fiscal quarter period ending on the Statement Date)

1. Consolidated Net Income for the Subject Period: $ 

2. The sum, without duplication, of the following amounts of Borrower and its consolidated Subsidiaries for the Subject Period to the extent deducted in determining Consolidated Net Income for the Subject Period:

   (a) Consolidated Interest Expense for the Subject Period: $ 
   (b) Provision for income taxes for the Subject Period: $ 
   (c) Depreciation expenses for the Subject Period: $ 
   (d) Amortization expenses for the Subject Period: $ 
   (e) reasonable costs, fees and expenses in connection with an initial public offering of the Capital Stock of the Borrower: $ 
   (f) non-cash stock compensation expenses: $ 
   (g) non-cash exchange, translation or performance losses relating to any foreign currency hedging transactions or currency fluctuations: $ 
   (h) costs, fees and expenses (1) in connection with the execution and delivery of this Agreement and the other Loan Documents or (2) paid by any Group Member after the Closing Date in connection with its obligations under the Loan Documents which are incurred not later than six (6) months after the Closing Date: $ 

2 Consolidated EBITDA for any period shall be determined on a Pro Forma Basis.

Attachment 3
(i) one-time costs, fees, and expenses in connection with Permitted Acquisitions or other transactions that if closed, would have constituted a Permitted Acquisition: $______

(j) non-cash purchase accounting adjustments (including, but not limited to deferred revenue write down) and any adjustments as required or permitted by the application of FASB 141 (requiring the use of purchase method of accounting for acquisitions and consolidations), FASB 142 (relating to changes in accounting for the amortization of good will and certain other intangibles) and FASB 144 (relating to the write downs of long-lived assets), in each case, in connection with Permitted Acquisitions: $______

(k) non-cash charges for goodwill and other intangible write-offs and write-downs in connection with Permitted Acquisitions or otherwise: $______

(l) other non-cash or non-recurring items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) approved by the Administrative Agent and the Required Lenders in writing as an ‘add back’ to Consolidated EBITDA: $______

(m) charges and expenses related to the recall of the “FitBit Force,” and other cash and non-cash items reducing Consolidated Net Income associated therewith (including costs and expenses associated with related litigation, claims and administrative proceedings) in an aggregate amount not to exceed $84,600,000 for the fiscal quarter ended December 31, 2013 and $27,900,000 for the fiscal quarter ended March 31, 2014: $______

3. The sum, without duplication, of the following amounts of Borrower and its consolidated Subsidiaries for the Subject Period to the extent included in determining Consolidated Net Income for the Subject Period: $______

   (a) the amounts for such period of (i) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period): $______

   (b) interest income: $______

4. Consolidated EBITDA for the Subject Period (Lines I.A.1 plus I.A.2 minus I.A.3): $______

B. Taxes based on income actually paid or required to be paid by the

Attachment 3
Borrower and its Subsidiaries in cash during the Subject Period (net of any cash refunds received but only to the extent such adjustment would not result in a negative number): $ __________

C. Cash dividends and distributions paid to any Person that is not a Loan Party during the Subject Period: $ __________

D. Consolidated Capital Expenditures for the Subject Period (other than Capital Expenditures to the extent financed with the proceeds of Indebtedness (other than proceeds of Loans)): $ __________

E. Consolidated Fixed Charges for the Subject Period:
   1. Consolidated Interest Expense accrued for the Subject Period (other than interest paid-in-kind, amortization of financing fees, and other non-cash Consolidated Interest Expense): $ __________
   2. Payments made or required to be paid during the Subject Period by the Borrower and its Subsidiaries on account of principal of Indebtedness of the Borrower and its Subsidiaries (excluding Loans to the extent the Borrower has the right to continue or convert such Loans pursuant to Section 2.13 of the Credit Agreement): $ __________
   3. Consolidated Fixed Charges for the Subject Period (Lines I.E.1+I.E.2) (without duplication): $ __________

F. Consolidated Fixed Charge Coverage Ratio for the Subject Period (ratio of Lines (I.A.8 minus I.B minus I.C. minus I.D.) to I.E.3): _______ to 1
   Minimum required: 1.1 to 1

Covenant compliance: Yes ☐ No ☐

II. Section 7.1(b) — Consolidated Leverage Ratio
The information described in this Section I is as of [ ], [ ] (the “Statement Date”), and pertains to the Subject Period defined below, as applicable.

A. Consolidated EBITDA for the Subject Period (from Line I.A.8 above): $ __________

B. Consolidated Total Indebtedness: $ __________

C. Consolidated Leverage Ratio for the Subject Period (ratio of Lines II.A.8 to I.B): _______ to 1

3 [Components to be annualized in accordance with the Credit Agreement.]

Attachment 3
III. Section 7.1(c) — Minimum Liquidity

Maximum allowed: to 1

Covenant compliance: Yes ☐ No ☐

Minimum required at all times: $15,000,000

Covenant compliance since the [Closing Date] 4 Yes ☐ No ☐ [prior Statement Date] 5 : 

4 Use for the first Compliance Certificate after the Closing Date.
5 Use for all subsequent Compliance Certificates.

Attachment 3
Change in the Jurisdiction of Organization of any Loan Party

Attachment 4
Patents, Registered Trademarks or Registered Copyrights

Attachment 5
This Certificate is delivered pursuant to Section 5.1(e) of that certain Amended and Restated Credit Agreement, dated as of August 13, 2014 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “Credit Agreement”), among (a) FitBit, Inc., a Delaware corporation (the “Borrower”), (b) the Lenders party thereto, (c) Silicon Valley Bank (“SVB”), as administrative agent (in such capacity, the “Administrative Agent”), (d) SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (e) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (f) SVB, SunTrust Robinson Humphrey, Inc., and Morgan Stanley, as co-lead arrangers and joint bookrunners. The undersigned [Secretary][Managing Member] of [the Borrower] hereby certifies in his/her capacity as an officer of the Borrower, and not in any personal capacity, as follows:

1. The representations and warranties of [the Borrower][the Certifying Loan Party] set forth in each of the Loan Documents to which it is a party or which are contained in any certificate furnished by or on behalf of [the Borrower][the Certifying Loan Party] pursuant to any of the Loan Documents to which it is a party are, (i) to the extent qualified by materiality, true and correct, and (ii) to the extent not qualified by materiality, true and correct in all material respects, in each case, on and as of the date hereof with the same effect as if made on the date hereof, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date.

2. I am the duly elected and qualified [Secretary][Managing Member] of [the Borrower][the Certifying Loan Party].

3. No Default or Event of Default has occurred and is continuing as of the date hereof or after giving effect to the Loans to be made on the date hereof and the use of proceeds thereof.

4. The conditions precedent set forth in Section 5.1 of the Credit Agreement were satisfied or waived, as applicable, as of the Closing Date.

5. There are no liquidation or dissolution proceedings pending or, to my knowledge, threatened against [the Borrower][the Certifying Loan Party], nor has any other event occurred which could be reasonably likely to materially adversely affect or threaten the continued [corporate][company] existence of [the Borrower][the Certifying Loan Party].

6. [The Borrower][The Certifying Loan Party] is a [corporation][limited liability company] duly [incorporated][organized], validly existing and in good standing under the laws of the jurisdiction of its organization.

7. Attached hereto as Annex I is a true and complete copy of the resolutions duly adopted by the Board of [Directors][Managers] of [the Borrower][the Certifying Loan Party] authorizing the execution, delivery and performance of the Loan Documents to which [the
Borrower][the Certifying Loan Party] is a party and all other agreements, documents and instruments to be executed, delivered and performed in connection therewith. Such resolutions have not in any way been amended, modified, revoked or rescinded, and have been in full force and effect since their adoption up to and including the date hereof and are now in full force and effect.

8. Attached hereto as Annex 2 is a true and complete copy of the [By- Laws][Operating Agreement] of [the Borrower][the Certifying Loan Party] as in effect on the date hereof.

9. Attached hereto as Annex 3 is a true and complete copy of the Certificate of [Incorporation][Formation] of [the Borrower][the Certifying Loan Party] as in effect on the date hereof, along with a long-form good-standing certificate for [the Borrower][the Certifying Loan Party] from the jurisdiction of its organization.

10. [For the Borrower – Attached hereto as Annex 4 is a true and complete copy of the Cash Flow Credit Agreement, which has been duly executed by the Borrower on the date hereof.]

11. The following persons are now duly elected and qualified officers of [the Borrower][the Certifying Loan Party] holding the offices indicated next to their respective names below, and the signatures appearing opposite their respective names below are the true and genuine signatures of such officers, and each of such officers, acting alone, is duly authorized to execute and deliver on behalf of [the Borrower][the Certifying Loan Party] each of the Loan Documents to which it is a party:  

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<th>Name</th>
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<th>Signature</th>
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[Signature page follows]  

Exhibit C
IN WITNESS WHEREOF, I have hereunto set my hand as of the date set forth below.

Name:  
Title:  [Secretary][Managing Member]

I, [ ], in my capacity as the [ ] of [the Borrower][the Certifying Loan Party], do hereby certify in the name and on behalf of [the Borrower][the Certifying Loan Party] that [ ] is the duly elected and qualified [Secretary][Managing Member] of [the Borrower][the Certifying Loan Party] and that the signature appearing above is [her][his] genuine signature.

Date: [ ]

Name:  
Title:  

Exhibit C
RESOLUTIONS

Exhibit C
[BY-LAWS][OPERATING AGREEMENT]

Exhibit C
[CERTIFICATE OF INCORPORATION][CERTIFICATE OF FORMATION]

AND

GOOD-STANDING CERTIFICATE

Exhibit C
FORM OF SOLVENCY CERTIFICATE
FITBIT, INC.

Date: , 2014

To the Administrative Agent,
and each of the Lenders party
to the Credit Agreement referred to below:

This SOLVENCY CERTIFICATE (this “Certificate”) is delivered pursuant to Section 5.1(p) of that certain Amended and Restated Credit Agreement, dated as of August 13, 2014 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “Credit Agreement”), among (a) FitBit, Inc., a Delaware corporation (the “Borrower”), (b) the Lenders party thereto, (c) Silicon Valley Bank (“SVB”), as administrative agent (in such capacity, the “Administrative Agent”), (d) SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (e) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (f) SVB, SunTrust Robinson Humphrey, Inc., and Morgan Stanley, as co-lead arranger and joint bookrunners. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement. The undersigned Chief Financial Officer of the Borrower, in such capacity only and not in her/his individual capacity, does hereby certify on behalf of each Loan Party as of the date hereof that:

1. For purposes of this Certificate, the undersigned has, or officers of the Loan Parties under the direction and supervision of the undersigned have, performed the following procedures as of and for the periods set forth below.

   (a) Reviewed the financial statements referred to in Section 5.1(c) of the Credit Agreement.
   (b) Made inquiries of certain officials of the Loan Parties who have responsibility for legal, financial and accounting matters.
   (c) Reviewed, to the satisfaction of the undersigned, the Loan Documents and the respective Schedules and Exhibits thereto.

3. Based on and subject to the foregoing, the undersigned Chief Financial Officer of the Borrower hereby certifies on behalf of each of the Loan Parties that, on and as of the date hereof and after giving effect to the Loans made by the Lenders on the Closing Date, the initial borrowings on the Closing Date and the application of the proceeds thereof, it is my opinion that each Loan Party is Solvent.

4. The Borrower does not intend, in receiving the Loans to be made on the Closing Date and the other transactions contemplated by the Loan Documents, to delay, hinder, or defraud either present or future creditors.

(Signature page follows)

Exhibit D
I represent the foregoing information to be, to the best of my knowledge and belief, true and correct and execute this Certificate as of the date first written above.

By: 
Name: 

as Chief Financial Officer of FitBit, Inc.

Exhibit D
This Assignment and Assumption Agreement (the “Assignment Agreement”) is dated as of the Assignment Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the “Assignor”) and the Assignee identified in item 2 below (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment Agreement as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Assignment Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letter of credit deposits, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment Agreement, without representation or warranty by the Assignor.

1. Assignor: [Name of Assignor]

2. Assignee: [Name of Assignee]

3. Borrower: FITBIT, INC., a Delaware corporation

4. Administrative Agent: SILICON VALLEY BANK

5. Credit Agreement: Amended and Restated Credit Agreement, dated as of August 13, 2014, among (a) the Borrower, (b) the Lenders party thereto, (c) the Administrative Agent, (d) Silicon Valley Bank (“SVB”) and SunTrust

Exhibit E
Bank ("SunTrust"), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (e) SunTrust and Morgan Stanley Senior Funding, Inc. ("Morgan Stanley"), as co-syndication agents for the Lenders, and (f) SVB, SunTrust Robinson Humphrey, Inc., and Morgan Stanley, as co-lead arrangers and joint bookrunners.

6. Assigned Interest[s]:

<table>
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<tr>
<th>Assignor</th>
<th>Assignee</th>
<th>Aggregate Amount of Commitment / Loans for all Lenders 1</th>
<th>Amount of Commitment / Loans Assigned 2</th>
<th>Percentage Assigned of Commitment / Loans 3</th>
<th>CUSIP Number</th>
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[7. Trade Date: ____________ ] 4

Assignment Effective Date: ____________, 20 [TO BE INSERTED BY THE ADMINISTRATIVE AGENT AND WHICH SHALL BE THE ASSIGNMENT EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREOF.]

[Signature pages follow]

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1. Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Assignment Effective Date.

2. Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Assignment Effective Date.

3. Set forth, to at least 9 decimals, as a percentage of the applicable Commitment/Loans of all Lenders thereunder.

4. To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

Exhibit E
The terms set forth in this Assignment Agreement are hereby agreed to:

ASSIGNOR ¹
[NAME OF ASSIGNOR]

By: 
Name: 
Title: 

ASSIGNEE ²
[NAME OF ASSIGNEE]

By: 
Name: 
Title: 

¹ Add additional signature blocks as needed.
² Add additional signature blocks as needed.

Exhibit E
Consented to and Accepted:  
SILICON VALLEY BANK,  
as Administrative Agent  
By                      
Name: 
Title: 

Consented to:  
FITBIT, INC.  
By                      
Name: 
Title: 

SILICON VALLEY BANK,  
as Issuing Lender  
By                      
Name: 
Title: 

SILICON VALLEY BANK,  
as Swingline Lender  
By                      
Name: 
Title: 

Borrower does not have consent rights if a Default or Event of Default has occurred and is continuing or the applicable assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the consent of the Borrower for an assignment to any Person that the Borrower reasonably classifies in writing as a competitor of the Borrower may be given or denied by the Borrower in its sole discretion; and provided, further, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five Business Days after having received reasonably detailed written notice thereof.

Exhibit E
1. Representations and Warranties

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment Agreement and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of any Loan Party, any of their respective Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by any Loan Party, any of their respective Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document or any other instrument or document furnished pursuant hereto or thereto.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment Agreement and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an Assignee under Section 10.6(b) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.6(b)(iii) of the Credit Agreement), (iii) from and after the Assignment Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.1 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment Agreement and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment Agreement and to purchase the Assigned Interest, and (vii) if it is a Non-U.S. Lender, attached to the Assignment Agreement is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on any of the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Assignment Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Assignment.

Exhibit E
Effective Date and to the Assignee for amounts which have accrued from and after the Assignment Effective Date.

3. General Provisions. This Assignment Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment Agreement may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment Agreement by telecopy (or other electronic method of transmission) shall be effective as delivery of a manually executed counterpart of this Assignment Agreement. This Assignment Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

Exhibit E
FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Not Partnerships for U.S. Federal Income Tax Purposes)

[Date]

Reference is made to that certain Amended and Restated Credit Agreement, dated as of August 13, 2014 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “Credit Agreement”), among (a) FitBit, Inc., a Delaware corporation (the “Borrower”), (b) the Lenders party thereto, (c) Silicon Valley Bank (“SVB”), as administrative agent (in such capacity, the “Administrative Agent”), (d) SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (e) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (f) SVB, SunTrust Robinson Humphrey, Inc., and Morgan Stanley, as co-lead arrangers and joint bookrunners.

Pursuant to the provisions of Section 2.20 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered by its proper and duly authorized signatory as of the day and year first written above.

[Name of Lender]

By
Name:
Title:

Exhibit F-1
FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Not Partnerships for U.S. Federal Income Tax Purposes)

[ Date ]

Reference is made to that certain Amended and Restated Credit Agreement, dated as of August 13, 2014 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “Credit Agreement”), among (a) FitBit, Inc., a Delaware corporation (the “Borrower”), (b) the Lenders party thereto, (c) Silicon Valley Bank (“SVB”), as administrative agent (in such capacity, the “Administrative Agent”), (d) SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (e) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (f) SVB, SunTrust Robinson Humphrey, Inc., and Morgan Stanley, as co-lead arrangers and joint bookrunners.

Pursuant to the provisions of Section 2.20 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered by its proper and duly authorized signatory as of the day and year first written above.

[Name of Participant]

By
Name: __________________________
Title: __________________________

Exhibit F-2
FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships for U.S. Federal Income Tax Purposes)

[ Date ]

Reference is made to that certain Amended and Restated Credit Agreement, dated as of August 13, 2014 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “Credit Agreement”), among (a) FitBit, Inc., a Delaware corporation (the “Borrower”), (b) the Lenders party thereto, (c) Silicon Valley Bank (“SVB”), as administrative agent (in such capacity, the “Administrative Agent”), (d) SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (e) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (f) SVB, SunTrust Robinson Humphrey, Inc., and Morgan Stanley, as co-lead arrangers and joint bookrunners.

Pursuant to the provisions of Section 2.20 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered by its proper and duly authorized signatory as of the day and year first written above.

[Name of Participant]

By
Name: 
Title:

Exhibit F-3
Reference is made to that certain Amended and Restated Credit Agreement, dated as of August 13, 2014 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “Credit Agreement”), among (a) FitBit, Inc., a Delaware corporation (the “Borrower”), (b) the Lenders party thereto, (c) Silicon Valley Bank (“SVB”), as administrative agent (in such capacity, the “Administrative Agent”), (d) SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (e) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (f) SVB, SunTrust Robinson Humphrey, Inc., and Morgan Stanley, as co-lead arrangers and joint bookrunners.

Pursuant to the provisions of Section 2.20 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered by its proper and duly authorized signatory as of the day and year first written above.

[Name of Lender]
By
Name:
Title:

Exhibit F-4
FORM OF [AMENDED AND RESTATED] 13 REVOLVING LOAN NOTE

FITBIT, INC.

THIS REVOLVING LOAN NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND PROVISIONS OF THE CREDIT AGREEMENT REFERRED TO BELOW. TRANSFERS OF THIS REVOLVING LOAN NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MUST BE RECORDED IN THE REVOLVING LOAN REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF SUCH CREDIT AGREEMENT.

[insert date]

FOR VALUE RECEIVED, the undersigned, FitBit, Inc., a Delaware corporation (the “Borrower”), hereby unconditionally promises to pay to [insert name of applicable Lender] (the “Lender”) or its registered assigns at the Funding Office specified in the Credit Agreement (as hereinafter defined) in Dollars and in immediately available funds, on the Revolving Termination Date the principal amount of (a) [insert amount of applicable Lender’s Revolving Commitment] ($[ ]), or, if less, (b) the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower pursuant to Section 2.4 of the Credit Agreement referred to below. The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in the Credit Agreement.

The holder of this Revolving Loan Note (this “Note”) is authorized to indorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date, Type and amount of each Revolving Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof, each continuation thereof, each conversion of all or a portion thereof to another Type and, in the case of Eurodollar Loans, the length of each Interest Period with respect thereto. Each such indorsement shall constitute prima facie evidence of the accuracy of the information indorsed. The failure to make any such indorsement or any error in any such indorsement shall not affect the obligations of the Borrower in respect of any Revolving Loan.

This Note (a) is one of the Revolving Loan Notes referred to in the Amended and Restated Credit Agreement, dated as of August 13, 2014 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “Credit Agreement”), among (i) FitBit, Inc., a Delaware corporation (the “Borrower”), (ii) the Lenders party thereto, (iii) Silicon Valley Bank (“SVB”), as administrative agent (in such capacity, the “Administrative Agent”), (iv) SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (v) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (vi) SVB, SunTrust Robinson Humphrey, Inc., and Morgan Stanley, as co-lead arrangers and joint bookrunners, (b) is subject to the provisions of the Credit Agreement and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. This Note is secured and guaranteed as provided in the Loan Documents. Reference is hereby made to the Loan Documents for a description of the properties and assets in which a security interest has been granted, the

13 Insert as applicable if this Note amends and restates a prior note.

Exhibit H-1
Upon the occurrence and during the continuance of any one or more Events of Default, all principal and all accrued interest then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, indorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN THE CREDIT AGREEMENT, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AND IN ACCORDANCE WITH THE REGISTRATION AND OTHER PROVISIONS OF SECTION 10.6 OF THE CREDIT AGREEMENT.**

**THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

Notwithstanding anything herein to the contrary, the lien and security interest granted pursuant to this Note or securing the obligations represented hereby and the exercise of any right or remedy hereunder or with respect thereto are subject to the provisions of the Intercreditor Agreement dated as of August 13, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the “**Intercreditor Agreement**”), among Silicon Valley Bank, in its capacity as ABL Agent for, and acting on behalf of, the ABL Secured Parties identified therein, and Morgan Stanley Senior Funding, Inc., in its capacity as Cash Flow Agent for, and acting on behalf of, the Cash Flow Secured Parties identified therein. In the event of any conflict between the terms of the Intercreditor Agreement and this Note, the terms of the Intercreditor Agreement shall govern and control.

**FITBIT, INC.**

By:  
Name:  
Title:  

14 Insert as applicable if this Note amends and restates a prior note.

Exhibit H-1
<table>
<thead>
<tr>
<th>Date</th>
<th>Amount of ABR Loans</th>
<th>Amount Converted to ABR Loans</th>
<th>Amount of Principal of ABR Loans Repaid</th>
<th>Amount of ABR Loans Converted to Eurodollar Loans</th>
<th>Unpaid Principal Balance of ABR Loans</th>
<th>Notation Made By</th>
</tr>
</thead>
</table>

Exhibit H-1
<table>
<thead>
<tr>
<th>Date</th>
<th>Amount of Eurodollar Loans</th>
<th>Amount Converted to Eurodollar Loans</th>
<th>Amount of Eurodollar Loans Converted to ABR Loans</th>
<th>Unpaid Principal Balance of Eurodollar Loans</th>
<th>Notation Made By</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Exhibit H-1

LOANS, CONTINUATIONS, CONVERSIONS AND REPAYMENTS OF EURODOLLAR LOANS
FORM OF AMENDED AND RESTATED SWINGLINE LOAN NOTE

FITBIT, INC.

THIS SWINGLINE LOAN NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND PROVISIONS OF THE CREDIT AGREEMENT REFERRED TO BELOW. TRANSFERS OF THIS SWINGLINE LOAN NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MUST BE RECORDED IN THE REVOLVING LOAN REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF SUCH CREDIT AGREEMENT.

$25,000,000.00
Santa Clara, California
August [            ], 2014

FOR VALUE RECEIVED, the undersigned, FITBIT, INC., a Delaware corporation (the “Borrower”), hereby unconditionally promises to pay to SILICON VALLEY BANK (the “Lender”) or its registered assigns at the Funding Office specified in the Credit Agreement (as hereinafter defined) in Dollars and in immediately available funds, on the Revolving Termination Date, the principal amount of (a) Twenty Five Million Dollars ($25,000,000), or, if less, (b) the aggregate unpaid principal amount of all Swingline Loans made by the Lender to the Borrower pursuant to Section 2.6 of the Credit Agreement referred to below. The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in the Credit Agreement.

The holder of this Swingline Loan Note (this “Note”) is authorized to indorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date and amount of each Swingline Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof. Each such indorsement shall constitute prima facie evidence of the accuracy of the information indorsed. The failure to make any such indorsement or any error in any such indorsement shall not affect the obligations of the Borrower in respect of any Swingline Loan.

This Note (a) is the Swingline Loan Note referred to in the Amended and Restated Credit Agreement, dated as of August 13, 2014 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “Credit Agreement”), among (i) FitBit, Inc., a Delaware corporation (the “Borrower”), (ii) the Lenders party thereto, (iii) Silicon Valley Bank (“SVB”), as administrative agent (in such capacity, the “Administrative Agent”), (iv) SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (v) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (vi) SVB, SunTrust Robinson Humphrey, Inc., and Morgan Stanley, as co-lead arrangers and joint bookrunners, (b) is subject to the provisions of the Credit Agreement and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. This Note is secured and guaranteed as provided in the Loan Documents. Reference is hereby made to the Loan Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof. This Note amends, restates and replaces in its entirety that certain Swingline Loan Note dated February 27, 2014 in the original principal amount of $5,000,000 made payable by the Borrower to the order of the Lender.

Exhibit H-2
Upon the occurrence and during the continuance of any one or more Events of Default, all principal and all accrued interest then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, indorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN THE CREDIT AGREEMENT, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AND IN ACCORDANCE WITH THE REGISTRATION AND OTHER PROVISIONS OF SECTION 10.6 OF THE CREDIT AGREEMENT.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Notwithstanding anything herein to the contrary, the lien and security interest granted pursuant to this Note or securing the obligations represented hereby and the exercise of any right or remedy hereunder or with respect there to are subject to the provisions of the Intercreditor Agreement dated as of August 13, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the “Intercreditor Agreement”), among Silicon Valley Bank in its capacity as ABL Agent for, and acting on behalf of, the ABL Secured Parties identified therein, and Morgan Stanley Senior Funding, Inc., in its capacity as Cash Flow Agent for, and acting on behalf of, the Cash Flow Secured Parties identified therein. In the event of any conflict between the terms of the Intercreditor Agreement and this Note, the terms of the Intercreditor Agreement shall govern and control.

FITBIT, INC.

By:____________________________
Name:____________________________
Title:____________________________

Exhibit H-2
### LOANS AND REPAYMENTS

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount of Loans</th>
<th>Amount of Principal of ABR Loans Repaid</th>
<th>Unpaid Principal Balance of ABR Loans</th>
<th>Notation</th>
<th>Made By</th>
</tr>
</thead>
</table>

Exhibit H-2
FORM OF TRANSACTION REPORT

FITBIT, INC.

Date:             , 201

Fitbit, Inc., a Delaware corporation (the “Borrower”), through the undersigned in [his][her] capacity as a duly authorized officer of such entity or an entity authorized to certify on such entity’s behalf, hereby certifies to the Administrative Agent, the Co-Collateral Agents and each Lender, in accordance with (a) the Amended and Restated Credit Agreement, dated as of August 13, 2014 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “Credit Agreement”), among (i) FitBit, Inc., a Delaware corporation (the “Borrower”), (ii) the Lenders party thereto, (iii) Silicon Valley Bank ("SVB"), as administrative agent (in such capacity, the “Administrative Agent”), (iv) SVB and SunTrust Bank ("SunTrust"), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (v) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (vi) SVB, SunTrust Robinson Humphrey, Inc., and Morgan Stanley, as co-lead arrangers and joint bookrunners, and (b) each of the other Loan Documents, that:

A. Borrowing Base and Compliance

Pursuant to the Guarantee and Collateral Agreement, the Administrative Agent has been granted, for the ratable benefit of the Secured Parties, a Lien on all Accounts and Inventory of the Borrower. The amounts, calculations and representations set forth on Schedule 1 are true and correct in all material respects and were determined in accordance with the terms and definitions set forth in the Credit Agreement. All of the Accounts referred to in Schedule 1 (other than those Accounts designated as ineligible on Schedule 1) are Eligible Accounts and all of the Inventory referred to in Schedule 1 (other than that Inventory designated as ineligible on Schedule 1) is Eligible Inventory. Attached are reports with detailed aged listings of the Borrower’s accounts receivable (by invoice date), accounts payables and deferred revenue schedule, and supporting detail and documentation with respect to the amounts, calculation and representations set forth on Schedule 1, all as reasonably requested by the Administrative Agent pursuant to the Credit Agreement.

B. General Certifications

The Borrower further certifies to the Administrative Agent, the Co-Collateral Agents and each Lender that: (i) the certifications, representations, calculations and statements herein will be true and correct as of the date hereof; (ii) each representation and warranty of each Loan Party contained in or pursuant to any Loan Document (A) to the extent qualified by materiality, is true and correct, and (B) to the extent not qualified by materiality, is true and correct in all material respects, in each case, on and as of such date as if made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date; (iii) each of the covenants and agreements contained in any Loan Document have been performed (to the extent required to be performed on or before the date hereof or each such effective date); and (iv) no Default or Event of Default has occurred and is continuing on the date hereof, nor will any thereof occur after giving effect to the request above.

[Signature page follows]

15 Include Inventory Report as separate schedule to the extent required by the Credit Agreement.

Exhibit I
IN WITNESS WHEREOF, the undersigned has caused this Transaction Report to be executed as of the day first written above.

FITBIT, INC.,
a Delaware corporation

By: 
Name: 
Title: 

Exhibit I
SCHEDULE 1
TO
TRANSACTION REPORT
OF
FITBIT, INC.

[Please See Attached]

Exhibit I
FORM OF COLLATERAL INFORMATION CERTIFICATE

COLLATERAL INFORMATION CERTIFICATE

FITBIT, INC.

AS THE BORROWER

Dated as of August [    ], 2014

Exhibit J
THIS COLLATERAL INFORMATION CERTIFICATE is being delivered pursuant to that certain Amended and Restated Credit Agreement (the “Credit Agreement”) to be entered into by and among FitBit, Inc. (“Borrower”), the Lenders party thereto, and Silicon Valley Bank, as administrative agent (“Agent”), and certain other parties thereto.

Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Credit Agreement. Other terms which are used but not otherwise defined herein but which are defined in Article 8 or Article 9 of the Uniform Commercial Code shall have the meaning set forth in such applicable Article of the Uniform Commercial Code.

The undersigned, being the duly appointed [Chief Financial Officer] of Borrower, hereby certifies on behalf of Borrower that:

NAMES:

1. The exact legal name of Borrower as it appears in its organizational papers, its jurisdiction of formation, its organizational identification number and its date of formation, are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Jurisdiction of Formation</th>
<th>Organizational Identification No.</th>
<th>Date of Formation</th>
</tr>
</thead>
</table>

2. Set forth below is each other legal name that Borrower has had during the last five years, together with the date of the relevant change:

<table>
<thead>
<tr>
<th>Prior Name</th>
<th>Date Name Was Changed From Such Name</th>
</tr>
</thead>
</table>

3. Within the past five years, the following Persons have been merged into Borrower or Borrower has acquired all or a material portion of the assets of such Person (provide names, dates and brief description of transaction):

4. The following is a list of all other names (including trade names or similar appellations) used by Borrower or any of its divisions or other business units at any time during the past five years:

Exhibit J
LOCATIONS:

5. The chief executive office of Borrower is located at the following address:

Address

6. The following is a list of all locations not identified in Item 5, above, where Borrower maintains its books and records relating to the Collateral:

Address

7. The following is a list of all locations where any of the Collateral comprising Goods, including Inventory, Equipment or Fixtures (other than motor vehicles and other mobile goods to the extent in transit from time to time), is located:

<table>
<thead>
<tr>
<th>Address</th>
<th>Brief Description of Assets at such Location</th>
</tr>
</thead>
</table>

8. The following is a list of all real property owned of record and beneficially by Borrower:

<table>
<thead>
<tr>
<th>County and State</th>
<th>Address and Legal Description</th>
</tr>
</thead>
</table>

9. The following is a list of all real property leased or subleased by or to Borrower, whether by way of a ground lease, a master lease, a standard site lease, license or otherwise (each a “Lease”) (include the name of each of the parties to each Lease as it appears on the Lease, and the address of the relevant premises under such Lease).

Exhibit J
INFORMATION ABOUT COLLATERAL:

Material Contracts:

10. The following is a list of all material licenses or sublicenses pursuant to which any third party licenses or sublicenses to Borrower the right to use any Intellectual Property Rights, including any right to use any software or any Patent, Trademark or Copyright exclusive or any mass market, non-customized licenses or sublicenses (collectively, the “Inbound Licenses”):

<table>
<thead>
<tr>
<th>Parties to Contract</th>
<th>Title and Date of Contract</th>
</tr>
</thead>
</table>

11. The following is a list of all material licenses or sublicenses pursuant to which Borrower licenses or sublicenses to any third party the right to use any Intellectual Property Rights, including any right to use any software or any Patent, Trademark or Copyright (collectively, the “Outbound Licenses”):

<table>
<thead>
<tr>
<th>Parties to Contract</th>
<th>Title and Date of Contract</th>
</tr>
</thead>
</table>

12. The following is a list of (and the location of) all material equipment and other personal property leased or subleased by Borrower from any third party, whether leased individually or jointly with others (include the name of the lessor or sublessor as it appears on the lease or sublease, the title of the applicable lease or sublease as amended to date, including all schedules thereto, and a general description of leased equipment and other property, the address at which such equipment and other property is located (collectively, the “Personal Property Leases”)):

<table>
<thead>
<tr>
<th>Parties to Contract</th>
<th>Title and Date of Contract</th>
<th>Description of Equipment and Location</th>
</tr>
</thead>
</table>

13. The following is a list of all material contracts and agreements, including collective bargaining agreements, and employment agreements, to which Borrower is a party or in which any of them has an interest relating to material employees (collectively, the “Employee Contracts”):

<table>
<thead>
<tr>
<th>Parties to Contract</th>
<th>Title and Date of Contract</th>
</tr>
</thead>
</table>

Exhibit J
14. The following is a list of all other material contracts and agreements of any kind or nature (to the extent not otherwise previously listed in this Collateral Information Certificate) to which Borrower is a party or in which it has an interest (collectively, the “Other Material Contracts”):

<table>
<thead>
<tr>
<th>Parties to Contract</th>
<th>Title and Date of Contract</th>
</tr>
</thead>
</table>

Government Licenses:

15. The following is a list of all material federal, state and other governmental licenses or authorizations required or reasonably necessary to operate Borrower’s business as currently conducted or as contemplated by Borrower to be operated immediately after the Closing Date (collectively, the “Governmental Licenses”):

<table>
<thead>
<tr>
<th>Licensing Entity</th>
<th>Type of License</th>
<th>Term</th>
<th>Assignable w/o Consent of Licensing Entity</th>
</tr>
</thead>
</table>

Intellectual Property:

16. The following is a list of domestic and foreign registered patents and patent applications owned by Borrower, whether individually or jointly with others:

<table>
<thead>
<tr>
<th>Registration or Application No. (indicate if an application)</th>
<th>Registration or Application Date</th>
<th>Jurisdiction of Registration or Application</th>
<th>Brief Description of Patent</th>
<th>Inventor/assigned to owner (if different)</th>
<th>(Y/N)</th>
</tr>
</thead>
</table>

17. The following is a list of domestic and foreign registered trademarks, trademark registrations, service mark registrations, tradenames or applications therefor, owned or used by Borrower, whether owned individually or jointly with others:

<table>
<thead>
<tr>
<th>Registration or Application No. (indicate if an application)</th>
<th>Registration or Application Date</th>
<th>Jurisdiction of Registration or Application</th>
<th>Description of Trademarks, Tradenames or Service Marks</th>
</tr>
</thead>
</table>

Exhibit J
18. The following is a list of domestic and foreign copyrights, copyright works, copyright registrations and applications therefor, owned or used by Borrower, whether owned individually or jointly with others:

<table>
<thead>
<tr>
<th>Registration or Application No.</th>
<th>Registration or Application Date</th>
<th>Jurisdiction of Registration or Application</th>
<th>Description of Copyright</th>
</tr>
</thead>
</table>

Investment Property and Deposits:

19. Borrower holds notes payable from the following Persons:

<table>
<thead>
<tr>
<th>Name of Obligor</th>
<th>Amount</th>
<th>Basic Term</th>
</tr>
</thead>
</table>

20. Borrower maintains the following deposit accounts (including demand, time, savings, passbook or similar accounts) with depositary banks:

<table>
<thead>
<tr>
<th>Name and Address of Depository Institution</th>
<th>Type and Account No.</th>
<th>Account-Holder</th>
</tr>
</thead>
</table>

Exhibit J
21. Borrower beneficially owns “investment property” in the following securities accounts held with securities intermediaries:

<table>
<thead>
<tr>
<th>Name and Address of Securities Intermediary</th>
<th>Type and Account No.</th>
<th>Account-Holder</th>
</tr>
</thead>
</table>

**Other Assets**

22. Borrower owns the following types of assets:
- Aircraft
- Motor Vehicles
- Vessels, boats, ships
- Franchise agreements
- Commercial tort claims

23. Borrower’s assets are encumbered by liens of third parties as follows:

<table>
<thead>
<tr>
<th>Name and Address of Secured Party</th>
<th>Assets encumbered</th>
<th>Method of Perfection</th>
</tr>
</thead>
</table>

**INFORMATION ABOUT BORROWER:**

24. Borrower, as of the Closing Date, is qualified to do business in the following jurisdictions:

<table>
<thead>
<tr>
<th>Name of Borrower</th>
<th>Jurisdiction</th>
</tr>
</thead>
</table>

25. Borrower has the following subsidiaries:

<table>
<thead>
<tr>
<th>Name of Subsidiary</th>
<th>State of Formation or Organization</th>
<th>Percentage Owned by Entity</th>
<th>Owned by</th>
</tr>
</thead>
</table>

Exhibit J
26. List all formation documents and material equity holders agreements pertaining to Borrower or to which Borrower is a party, including operating agreements, partnership agreements, bylaws, certificates of formation, certificates or articles of organization, certificates or articles of incorporation, shareholder or other equityholder agreements, trust or voting rights agreements, registration rights agreements, warrants and warrant purchase agreements, convertible debt documents and options and other equity incentive plans. The undersigned certifies that each such agreement is in full force and effect, and has not been modified, amended, supplemented or restated except as listed.

27. The following is a complete list of pending and threatened litigation or claims involving amounts claimed against Borrower in an indefinite amount or in excess of $50,000 in each case:

<table>
<thead>
<tr>
<th>Name of Claimant</th>
<th>Amount and Description</th>
</tr>
</thead>
</table>

28. Borrower has directly or indirectly guaranteed the following obligations of third parties:

<table>
<thead>
<tr>
<th>Debtor</th>
<th>Creditor</th>
<th>Amount</th>
</tr>
</thead>
</table>

[signature page follows]

Exhibit J
The undersigned hereby certifies the foregoing information to be true and correct in all material respects and executes this Collateral Information Certificate as of __________, 2014

FITBIT, INC.

By: __________________________________________

Printed Name: __________________________________
Title: _________________________________________

Exhibit J
SCHEDULES TO THE COLLATERAL INFORMATION CERTIFICATE

( Please see attached schedules )

Exhibit J
TO: SILICON VALLEY BANK
3003 Tasman Drive
Santa Clara, CA 95054
Attention: Corporate Services Department

RE: Amended and Restated Credit Agreement, dated as of August 13, 2014 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “Credit Agreement”), among (a) FitBit, Inc., a Delaware corporation (the “Borrower”), (b) the Lenders party thereto, (c) Silicon Valley Bank (“SVB”), as administrative agent (in such capacity, the “Administrative Agent”), (d) SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (e) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (f) SVB, SunTrust Robinson Humphrey, Inc., and Morgan Stanley, as co-lead arrangers and joint bookrunners. Capitalized terms used but not otherwise defined herein shall have the respective meanings given to such terms in the Credit Agreement.

Ladies and Gentlemen:

The undersigned refers to the Credit Agreement and hereby gives you irrevocable notice, pursuant to Section 2.5 [2.7(a)] of the Credit Agreement, of the borrowing of a Revolving Loan[[Swingline Loan]].

1. The requested Borrowing Date, which shall be a Business Day, is .

2. The aggregate amount of the requested Loan is $ .

3. The requested Loan shall consist of $ of ABR Loans and $ of Eurodollar Loans.

4. The duration of the Interest Period for the Eurodollar Loans included in the requested Loan shall be [one][two][three][six] months.

5. [Insert instructions for remittance of the proceeds of the applicable Loans to be borrowed]

6. The undersigned, in his/her capacity as a Responsible Officer of the Borrower and not in his/her individual capacity, hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed Loan before and after giving effect thereto, and to the application of the proceeds therefrom, as applicable:

(a) each representation and warranty of each Loan Party contained in or pursuant to any Loan Document (i) to the extent qualified by materiality, is true and correct, and (ii) to the extent not qualified by materiality, is true and correct in all material respects, in each case, on and as of the date hereof except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date;

Exhibit K
(b) no Default or Event of Default exists or will occur after giving effect to the extensions of credit requested herein; and

(c) after giving effect to such Revolving Extension of Credit, the availability and borrowing limitations specified in Section 2.4 of the Credit Agreement will be satisfied.

[ Signature page follows ]

Exhibit K
IN WITNESS WHEREOF, the undersigned has caused this notice to be duly executed and delivered by its proper and duly authorized officer as of the day and year first written above.

FITBIT, INC.

By: ________________________________
Name: ______________________________
Title: ______________________________

For internal Bank use only

<table>
<thead>
<tr>
<th>Eurodollar Pricing Date</th>
<th>Eurodollar Rate</th>
<th>Eurodollar Variance</th>
<th>Maturity Date</th>
</tr>
</thead>
</table>

Exhibit K
FORM OF NOTICE OF CONVERSION/CONTINUATION

FITBIT, INC.

Date:              

TO: SILICON VALLEY BANK

3003 Tasman Drive
Santa Clara, CA 95054
Attention:          

RE: Amended and Restated Credit Agreement, dated as of August 13, 2014 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “Credit Agreement”), among (a) FitBit, Inc., a Delaware corporation (the “Borrower”), (b) the Lenders party thereto, (c) Silicon Valley Bank (“SVB”), as administrative agent (in such capacity, the “Administrative Agent”), (d) SVB and SunTrust Bank (“SunTrust”), as co-collateral agents for the Lenders (in such capacities, the “Collateral Agents”), (e) SunTrust and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-syndication agents for the Lenders, and (f) SVB, SunTrust Robinson Humphrey, Inc., and Morgan Stanley, as co-lead arrangers and joint bookrunners. Capitalized terms used but not otherwise defined herein shall have the respective meanings given to such terms in the Credit Agreement.

Ladies and Gentlemen:

The undersigned, in his/her capacity as a Responsible Officer of the Borrower and not in his/her individual capacity, refers to the Credit Agreement and hereby gives you irrevocable notice pursuant to Section 2.13(a) [2.13(b)] of the Credit Agreement, of the [conversion] [continuation] of the Loans specified herein, that:

1. The date of the [conversion] [continuation] is .

2. The aggregate amount of the proposed Loans to be [converted] [continued] is $ .

3. The Loans are to be [converted into] [continued as] [Eurodollar] [ABR] Loans.

4. The duration of the Interest Period for the Eurodollar Loans included in the [conversion] [continuation] shall be [one][two][three][six] months.

5. The undersigned on behalf of the Borrower, hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed [conversion] [continuation], before and after giving effect thereto and to the application of the proceeds therefrom:

   (a) each representation and warranty of each Loan Party contained in or pursuant to any Loan Document (i) to the extent qualified by materiality, is true and correct, and (ii) to the extent not qualified by materiality, is true and correct in all material respects, in each case, on and

   Exhibit M
as of the date hereof as if made on and as of the date hereof, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date; and

(b) no Default or Event of Default exists or shall occur after giving effect to the [conversion] [continuation] requested to be made on such date.

[Signature page follows]

Exhibit M
IN WITNESS WHEREOF, the undersigned has caused this notice to be duly executed and delivered by its proper and duly authorized officer as of the day and year first written above.

FITBIT, INC.

By: 
Name: 
Title: 

For internal Bank use only

<table>
<thead>
<tr>
<th>Eurodollar Pricing Date</th>
<th>Eurodollar Rate</th>
<th>Eurodollar Variance</th>
<th>Maturity Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Exhibit M
REVOLVING CREDIT AND GUARANTY AGREEMENT

dated as of

August 13, 2014

among

FITBIT, INC.,

The Guarantors Party Hereto,

The Lenders Party Hereto

and

MORGAN STANLEY SENIOR FUNDING, INC.,

as Administrative Agent and Collateral Agent

______________________________

MORGAN STANLEY SENIOR FUNDING, INC., SILICON VALLEY BANK

and

SUNTRUST ROBINSON HUMPHREY, INC.,

as Joint Lead Arrangers and Joint Bookrunners

SILICON VALLEY BANK and SUNTRUST BANK,

as Co-Syndication Agent
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<td>Section 7.10</td>
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<tr>
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<td>EXHIBITS</td>
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<td>Exhibit I — Form of Solvency Certificate</td>
</tr>
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</tr>
</tbody>
</table>
REVOLVING CREDIT AND GUARANTY AGREEMENT dated as of August 13, 2014, among FITBIT, INC., as Borrower, the GUARANTORS party hereto, the LENDERS party hereto, MORGAN STANLEY BANK, N.A., as Swing Line Lender, MORGAN STANLEY BANK, N.A., as Issuing Bank, and MORGAN STANLEY SENIOR FUNDING, INC., as Administrative Agent and Collateral Agent.

The Borrower (such term and each other capitalized term used and not otherwise defined herein having the meaning assigned to it in Article I), has requested that the Lenders make Loans to the Borrower on a revolving credit basis on and after the date hereof and at any time and from time to time prior to the Commitment Termination Date.

The proceeds of borrowings hereunder are to be used for the purposes described in Section 5.9. The Lenders are willing to establish the credit facility referred to in the preceding paragraph upon the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“ABL Credit Agreement” means that certain Amended and Restated Credit Agreement, dated as of the Closing Date, by and among the Borrower, the several banks and other financial institutions or entities from time to time party thereto, Silicon Valley Bank, as administrative agent, and Silicon Valley Bank and SunTrust Bank, as co-collateral agents, as the same now exists or may hereafter be amended, modified, supplemented, renewed, restated or replaced.

“ABL Documents” has the meaning set forth in the Intercreditor Agreement.

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

“Acquisition” means any transaction or series of related transactions resulting in the acquisition by the Borrower or any of its wholly owned Restricted Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Equity Interests of, or a business line or unit of a division of, any Person.

“Acquisition Consideration” means the purchase consideration for any Permitted Acquisition and all other payments by Borrower or any of its Restricted Subsidiaries in exchange for, or as part of, or in connection with, any Permitted Acquisition, whether paid in cash or by exchange of Equity Interests or of properties or otherwise and whether payable at or prior to the consummation of such Permitted Acquisition or deferred for payment at any future time, including any assumptions of Indebtedness and any earnouts or other contingent deferred purchase price agreements to the extent constituting Indebtedness hereunder.

“Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.
“Administrative Agent” means Morgan Stanley Senior Funding, Inc., in its capacity as administrative agent for the Lenders hereunder, or any successor administrative agent.

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

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

“Agent” means each of the Administrative Agent and the Collateral Agent.

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

“Alternate Base Rate” means, for any day, a rate per annum equal to the highest of (a) 3.50%, (b) the Prime Rate in effect on such day, (c) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (d) the Adjusted LIBO Rate for an Interest Period of 1 month commencing on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

“Applicable Percentage” means, with respect to any Lender, the percentage of the total Commitments represented by such Lender’s Commitment (or if the Commitments have terminated or expired, such Lender’s share of the total Revolving Exposure at that time); provided that if any Defaulting Lender exists at such time, the Applicable Percentage shall be calculated disregarding such Defaulting Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“Applicable Margin” or “Commitment Fee Rate” means, commencing on the date on which the Administrative Agent receives copies of the consolidated financial statements of the Borrower and its Subsidiaries in respect of the first fiscal quarter of the Borrower ending after the Closing Date, together with a Compliance Certificate in respect thereof as contemplated by Section 5.1(c), the rate per annum set forth under the column heading below opposite the applicable Consolidated Total Leverage Ratio level reported in the most recent Compliance Certificate:

<table>
<thead>
<tr>
<th>Consolidated Total Leverage Ratio</th>
<th>Eurodollar Loans</th>
<th>ABR Loans</th>
<th>Fee Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>≥ 1.50:1.00</td>
<td>3.50%</td>
<td>2.50%</td>
<td>0.50%</td>
</tr>
<tr>
<td>&lt; 1.50:1.00</td>
<td>3.25%</td>
<td>2.25%</td>
<td>0.375%</td>
</tr>
</tbody>
</table>

Notwithstanding the foregoing, (a) until the delivery of the first Compliance Certificate required to be delivered pursuant to Section 5.1(c) in connection with the delivery by the Borrower of the consolidated financial statements required to be delivered to the Administrative Agent pursuant to Sections 5.1 (a) and (b), the Applicable Margin shall be the rates corresponding to a Consolidated Total
Leverage Ratio of greater than or equal to 1.50:1.00 in the foregoing table, (b) if the Borrower fails to deliver the financial statements required by Sections 5.1(a) and (b), and the related Compliance Certificate required by Section 5.1(c), by the respective date required thereunder after the end of any related fiscal month of the Borrower, the Applicable Margin and the Commitment Fee Rate shall be the rates corresponding to the Consolidated Total Leverage Ratio of greater than or equal to 1.50:1.00 in the foregoing table until such financial statements and Compliance Certificate are delivered, and (c) no reduction to the Applicable Margin or the Commitment Fee Rate shall become effective at any time when an Event of Default has occurred and is continuing.

If, as a result of any restatement of or other adjustment to the financial statements of the Loan Parties or for any other reason, the Administrative Agent determines that (x) the Consolidated Total Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (y) a proper calculation of the Consolidated Total Leverage Ratio would have resulted in different pricing for any period, then: (i) if the proper calculation of the Consolidated Total Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall automatically and retroactively be obligated to pay to the Administrative Agent, for the benefit of the applicable Lenders, promptly on demand by the Administrative Agent, an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period; and (ii) if the proper calculation of the Consolidated Total Leverage Ratio would have resulted in lower pricing for such period, neither the Administrative Agent nor any Lender shall have any obligation to repay any interest or fees to the Borrower. If the Administrative Agent makes a determination that the proper calculation of the Consolidated Total Leverage Ratio would have resulted in higher pricing for any period, then the Administrative Agent will endeavor to provide the Borrower with written notice promptly following such determination, provided that failure to provide such written notice shall not relieve the Borrower of any obligation to pay any amounts due hereunder.

“Application” means an application, substantially in the form of Exhibit J or such other form as the Issuing Bank may specify as the form for use by its similarly situated customers from time to time, requesting the Issuing Bank to open a Letter of Credit.

“Approved Fund” has the meaning set forth in Section 10.4.

“Asset Sale” means a sale, lease (as lessor or sublessor), sale and leaseback, license (as licensor or sublicensee), exchange, transfer or other disposition to, any Person, in one transaction or a series of transactions, of all or any part of the Borrower’s or any of its Restricted Subsidiaries’ businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including the Equity Interests of any of the Borrower’s Subsidiaries, other than (a) inventory (or other assets, including intangible assets) sold, leased or licensed out in the ordinary course of business, (b) obsolete, surplus or worn-out property, (c) sales of Cash Equivalents for the fair market value thereof, (d) dispositions of property (including the sale of any Equity Interest owned by such Person) from (i) any Restricted Subsidiary that is not a Guarantor to any other Restricted Subsidiary that is not a Guarantor, (ii) any Restricted Subsidiary that is not a Guarantor to any Loan Party for no more than fair market value or (iii) any Loan Party to any other Loan Party, (e) dispositions of property in connection with casualty or condemnation events, (f) dispositions of past due accounts receivable in connection with the collection, write down or compromise thereof in the ordinary course of business, (g) dispositions of property to the extent that (x) such property is exchanged for credit against the purchase price of similar replacement property or (y) the proceeds of such disposition are promptly applied to the purchase price of such replacement property, (h) dispositions permitted by clause (a) of Section 6.3, (i) dispositions of Intellectual Property (as defined in the Security Agreement) to one or more wholly-owned Foreign Subsidiaries for the fair market value thereof on an arm’s-length basis (as determined in good faith by a resolution of the Board of Directors, excluding any directors that have a
conflict of interest related to the proposed transaction), (j) dispositions of assets acquired in connection with (or owned by a Person that is acquired in connection with) an Acquisition for the fair market value thereof, so long as such assets are determined by the Borrower in good faith not to be material to the Borrower’s and its Subsidiaries’ business, taken as a whole, and (k) any other sale, lease, sale and leaseback, license, exchange, transfer or other disposition of assets or properties; provided, that, (i) no Default or Event of Default exists or would result therefrom, (ii) not less than 75% of the sales price from any such disposition shall be paid in cash or Cash Equivalents, and (iii) the aggregate consideration received in respect of all such dispositions under this clause (k) during the term of this Agreement does not exceed 10% of Consolidated Total Assets.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.4), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

“Availability Period” means the period from and including the Closing Date to but excluding the Commitment Termination Date.

“Available Amount” means, at any time, an amount equal to:

(a) the sum, without duplication, of:

(i) an amount, not less than zero, equal to the aggregate amount, determined for all fiscal years commencing with the fiscal year ending on December 31, 2014, of (x) Consolidated Excess Cash Flow for such fiscal year minus (y) 50.0% of Consolidated Excess Cash Flow for such fiscal year; plus

(ii) the amount of any capital contributions or proceeds of other equity issuances received as cash equity by the Borrower (other than Disqualified Equity Interests), in each case, during the period from and including the Business Day immediately following the Closing Date through and including such time; plus

(iii) $10,000,000; minus

(b) the aggregate amount of any Restricted Payments made by the Borrower or any Restricted Subsidiary pursuant to Section 6.4(a) after the Closing Date in reliance on the Available Amount.

“Bankruptcy Code” means Chapter 11 of Title 11 of the United States Code, as amended from time to time and any successor statute and all rules and regulations promulgated thereunder.

“Beneficiary” means each Agent, Issuing Bank, Lender and Lender Counterparty.

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

“Board of Directors” means the board of directors or comparable governing body of the Borrower, or any committee thereof duly authorized to act on its behalf.

“Borrower” means Fitbit, Inc., a Delaware corporation.
“Borrowing” means (a) Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect or (b) the issuing of Letters of Credit.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.5.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

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

“Cash Equivalents” means

(a) United States dollars, or money in other currencies received in the ordinary course of business,

(b) U.S. Government Obligations or certificates representing an ownership interest in U.S. Government Obligations with maturities not exceeding one year from the date of acquisition,

(c)(i) demand deposits, (ii) time deposits and certificates of deposit with maturities of one year or less from the date of acquisition, (iii) bankers’ acceptances with maturities not exceeding one year from the date of acquisition, and (iv) overnight bank deposits, in each case with any bank or trust company organized or licensed under the laws of the United States or any State thereof having capital, surplus and undivided profits in excess of $500 million whose short-term debt is rated “A-2” or higher by S&P or “P-2” or higher by Moody’s,

(d) repurchase obligations with a term of not more than seven days for underlying securities of the type described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above,

(e) commercial paper rated at least P-1 by Moody’s or A-1 by S&P and maturing within one year after the date of acquisition,

(f) securities with maturities of one year or less from the date of acquisition which (or the issuer of which) are rated at least A or A-1 by S&P or A2 or P-1 by Moody’s, and

(g) money market funds at least 90% of the assets of which consist of investments of the type described in clauses (1) through (6) above.
“Change in Control” means (a) at any time, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), excluding any one or more of the Permitted Investors, shall become, or obtain rights (whether by means or warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of 50% or more of the ordinary voting power for the election of directors of the Borrower (determined on a fully diluted basis); (b) during any period of 24 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (disregarding individuals who cease to serve due to death or disability and who are not replaced) (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body, (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors), or (iv) whose election or nomination to that board or equivalent governing body was required by a designation by one or more stockholders having the contractual right to designate one or more members of the board or equivalent governing body pursuant to a voting agreement or shareholders’ agreement or similar agreement to which Permitted Investors holding a majority of the Borrower’s Equity Interests held by all Permitted Investors are party; (c) at any time, the Borrower shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding Equity Interests of each Guarantor (disregarding minimal numbers of shares held to comply with applicable laws requiring a legal entity to have more than one Equity Interest holder for the entity to be reorganized) free and clear of all Liens (except Liens created by the Security Documents and Liens permitted by Section 7.3(c) which are non-consensual permitted Liens); or (d) the occurrence of a “Change of Control” under the ABL Credit Agreement.

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

“Closing Date” means the date on which the conditions specified in Section 4.1 are satisfied (or waived in accordance with Section 10.2).

“Code” means the U.S. Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“Collateral” means, collectively, all of the real, personal and mixed property (including Equity Interests) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.
“Collateral Agent” means Morgan Stanley Senior Funding, Inc., in its capacity as collateral agent for the Lenders hereunder, or any successor collateral agent.

“Collateral Documents” means the Security Agreement, the Intellectual Property Security Agreements, the Mortgages and all other instruments, documents and agreements delivered by or on behalf of any Loan Party pursuant to this Agreement or any of the other Loan Documents in order to grant to, or perfect in favor of, the Collateral Agent, for the benefit of the Lenders, a Lien on any Collateral of that Loan Party as security for the Obligations.

“Commitment” means, with respect to each Lender, the commitment of such Lender to make Loans hereunder and to acquire participations in Letters of Credit and Swing Line Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Loans hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.8, (b) increased from time to time pursuant to Section 2.19 and (c) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 2.20 or Section 10.4. The initial amount of each Lender’s Commitment as of the Closing Date is set forth on Schedule 2.1. The initial aggregate amount of the Lenders’ Commitments as of the Closing Date is $40,000,000.

“Commitment Fee Rate” has the meaning set forth in the definition of “Applicable Margin”.

“Commitment Increase” has the meaning set forth in Section 2.19(a).

“Commitment Termination Date” means the earliest to occur of (a) the Maturity Date, (b) the date the Commitments are permanently reduced to zero pursuant to Section 2.10, and (c) the date of the termination of the Commitments pursuant to Section 8.1.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Compliance Certificate” means a compliance certificate of a Financial Officer substantially in the form of Exhibit F.

“Consolidated Adjusted EBITDA” means with respect to the Borrower and its Restricted Subsidiaries for any period, (a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, plus (ii) to the extent deducted in the calculation of Consolidated Net Income, the sum of (A) Consolidated Interest Expense, plus (B) provisions for taxes based on income, plus (C) total depreciation expense, plus (D) total amortization expense, plus (E) reasonable costs, fees and expenses in connection with an initial public offering of the Capital Stock of the Borrower, plus (F) non-cash stock compensation expenses, plus (G) non-cash exchange, translation or performance losses relating to any foreign currency hedging transactions or currency fluctuations, plus (H) costs, fees and expenses (1) in connection with the execution and delivery of this Agreement and the other Loan Documents or (2) paid by the Borrower or any Restricted Subsidiary after the Closing Date in connection with its obligations under the Loan Documents which are incurred not later than six (6) months after the Closing Date, plus (I) one-time costs, fees, and expenses in connection with Permitted Acquisitions or other transactions that if closed, would have constituted a Permitted Acquisition, plus (J) non-cash purchase accounting adjustments (including, but not limited to deferred revenue write down) and any adjustments as required or permitted by the application of FASB 141 (requiring the use of purchase method of accounting for acquisitions and consolidations), FASB 142 (relating to changes in accounting for the amortization of goodwill and certain other intangibles) and FASB 144 (relating to the write downs of long-lived assets), in each case, in connection with Permitted Acquisitions, plus (K) non-cash charges.
for goodwill and other intangible write-offs and write-downs in connection with Permitted Acquisitions or otherwise, plus (L) other non-cash or non-recurring items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) approved by the Administrative Agent and the Required Lenders in writing as an ‘add back’ to Consolidated EBITDA, plus (M) charges and expenses related to the recall of the “FitBit Force,” and other cash and non-cash items reducing Consolidated Net Income associated therewith (including costs and expenses associated with related litigation, claims and administrative proceedings) in an aggregate amount not to exceed $84,600,000 for the fiscal quarter ended December 31, 2013 and $27,900,000 for the fiscal quarter ended March 31, 2014; provided that this clause (M) shall not apply in calculations of the Consolidated Total Leverage Ratio for purposes of satisfying the incurrence test under Section 6.1(i), minus (b) the sum, without duplication of the amounts for such period of (i) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period), plus (ii) interest income; provided that Consolidated EBITDA for any period shall be determined on a Pro Forma Basis

“Consolidated Capital Expenditures” means, for any period, the aggregate of all expenditures of the Borrower and its Restricted Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in “purchase of property and equipment” or similar items, or which should otherwise be capitalized, reflected in the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries.

“Consolidated Current Assets” means, as at any date of determination, the total assets of the Borrower and its Restricted Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding cash and Cash Equivalents.

“Consolidated Current Liabilities” means, as at any date of determination, the total liabilities of the Borrower and its Restricted Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding the current portion of long term debt.

“Consolidated Excess Cash Flow” means, for any period, an amount (if positive) equal to:

(a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, plus, (ii) to the extent reducing Consolidated Net Income, the sum, without duplication, of amounts for non-cash charges reducing Consolidated Net Income, including for depreciation and amortization (excluding any such non-cash charge to the extent that it represents an accrual or reserve for potential cash charge in any future period or amortization of a prepaid cash gain that was paid in a prior period), plus (c) the Consolidated Working Capital Adjustment (if positive), minus

(b) the sum, without duplication, of (i) the amounts for such period paid from internally generated cash of (1) repayments of Indebtedness for borrowed money (excluding repayments of the Loans except to the extent the Commitments are permanently reduced in connection with such repayments) and repayments of Capital Lease Obligations (excluding any interest expense portion thereof), (2) Consolidated Capital Expenditures and (3) Acquisitions, plus (ii) other non-cash gains increasing Consolidated Net Income for such period (excluding any such non-cash gain to the extent it represents the reversal of an accrual or reserve for potential cash gain in any prior period), plus (iii) the Consolidated Working Capital Adjustment (if negative).

“Consolidated Interest Expense” means for any period, total interest expense (including that portion of any Capital Lease Obligations that is treated as interest in accordance with GAAP) of the
Borrower and its consolidated Subsidiaries for such period with respect to all outstanding Indebtedness of such Persons (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

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

“Consolidated Total Assets” means, at any date of determination, the total amount of assets of the Borrower and its Restricted Subsidiaries, as set forth on the most recent financial statements delivered pursuant to Sections 5.1(a) and (b).

“Consolidated Total Debt” of the Borrower and its Restricted Subsidiaries, on any date, means all Indebtedness of the Borrower and its Restricted Subsidiaries on such date, determined on a consolidated basis in accordance with GAAP, but excluding any liabilities referred to in clauses (f) and (g) of the definition of Indebtedness.

“Consolidated Total Leverage Ratio” means, at any date, the ratio of (a) Consolidated Total Debt on such date to (b) Consolidated Adjusted EBITDA for the four fiscal quarter period ending on or most recently prior to such date.

“Consolidated Working Capital” means, as at any date of determination, the excess of Consolidated Current Assets of the Borrower and its Restricted Subsidiaries over Consolidated Current Liabilities of the Borrower and its Restricted Subsidiaries.

“Consolidated Working Capital Adjustment” means, for any period on a consolidated basis, the amount (which may be a negative number) by which Consolidated Working Capital as of the beginning of such period exceeds (or is less than) Consolidated Working Capital as of the end of such period. In calculating the Consolidated Working Capital Adjustment there shall be excluded the effect of reclassification during such period of current assets to long term assets and current liabilities to long term liabilities and the effect of any Acquisition and the designation of any Unrestricted Subsidiary as a Restricted Subsidiary or any Restricted Subsidiary as an Unrestricted Subsidiary during such period; provided that (i) there shall be included with respect to any Acquisition during such period an amount (which may be a negative number) equal to the difference between the Consolidated Working Capital acquired in such Acquisition as at the time of such Acquisition and the Consolidated Working Capital from such Acquisition at the end of such period and (ii) there shall be included with respect to any Unrestricted Subsidiary that is designated as a Restricted Subsidiary during such period an amount (which may be a negative number) equal to the difference between the Consolidated Working Capital gained in such designation as at the time of such designation and the Consolidated Working Capital from such designation at the end of such period.
“Contractual Obligation” means as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

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

“Co-Syndication Agents” means Silicon Valley Bank and SunTrust Bank, in their capacity as co-syndication agents hereunder.

“Counterpart Agreement” means a Counterpart Agreement substantially in the form of Exhibit H delivered by a Loan Party pursuant to Section 5.10.

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

“Declining Lender” has the meaning set forth in Section 2.20.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Defaulting Lender” means, subject to Section 2.21(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder, (ii) fund any portion of its participations in Letters of Credit or Swing Line Loans or (iii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless, in each case, such Lender notifies the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless, in each case, such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s good faith determination that one or more conditions precedent to such funding or payment (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (b) has notified the Borrower, Issuing Bank, Swing Line Lender or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations and participations in then outstanding Letters of Credit and Swing Line Loans hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or

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from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.21(c)) upon delivery of written notice of such determination to the Borrower and each Lender.

“Deferred Payment Obligations” has the meaning set forth in Section 6.1(j).

“Disclosed Matters” means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.6.

“Disqualified Equity Interest” means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests and the payment in cash in lieu of the issuance of fractional shares of such Equity Interests), in whole or in part or (iii) is or becomes convertible into or exchangeable (unless at the sole option of the issuer thereof) for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 181 days after the Maturity Date then in effect; provided that Equity Interests will not constitute Disqualified Equity Interests solely because of provisions giving holders thereof the right to require repurchase or redemption upon an “asset sale” or “change of control” occurring prior to the date that is 181 days after the Maturity Date then in effect if the payment upon such redemption or repurchase is contractually subordinated in right of payment to the Obligations.

“dollars” or “$” refers to lawful money of the United States of America.

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

“Environmental Laws” means any and all foreign, Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health or the environment, as now or may at any time hereafter be in effect.

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

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest; provided that Equity Interests shall not include any debt securities that are convertible into or exchangeable for any combination of Equity Interests and/or cash.
“ERISA” means the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“ERISA Affiliate” means any person that for purposes of Title I or Title IV of ERISA or Section 412 of the Code would be deemed at any relevant time to be a single employer or otherwise aggregated with the Borrower or a Subsidiary under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

“ERISA Event” means any one or more of the following: (a) any reportable event, as defined in Section 4043 of ERISA, with respect to a Plan; (b) the termination of any Plan under Section 4041 of ERISA; (c) the institution of proceedings by the PBGC under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (d) the failure to make a required contribution to any Plan that would result in the imposition of a lien or other encumbrance or the provision of security under Section 430 of the Code or Section 303 or 4068 of ERISA, or the arising of such a lien or encumbrance; (e) any Borrower, Subsidiary or any ERISA Affiliate requests a minimum funding waiver or fails to satisfy the minimum funding standard under Section 412 of the Code or Section 302 of ERISA; (f) a determination that any Plan is, or is reasonably expected to be, considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA; (g) engaging in a non-exempt prohibited transaction within the meaning of Section 4975 of the Code or Section 406 of ERISA with respect to a Plan; (h) the complete or partial withdrawal of any Borrower, Subsidiary or any ERISA Affiliate from a Multiemployer Plan or the notification to any Borrower, Subsidiary or any ERISA Affiliate that a Multiemployer Plan is in reorganization; or (i) a determination that any Plan is in endangered or critical status under Section 432 of the Code or Section 305 of ERISA.

“ERISA Funding Rules” means the rules regarding minimum required contributions (including any installment payment thereof) to Pension Plans, as set forth in Section 412 of the Code and Section 302 of ERISA, with respect to Plan years ending prior to the effective date of the Pension Protection Act of 2006, and thereafter, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Eurodollar,” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

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

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time and any successor statute.

“Excluded Foreign Subsidiary” means any Subsidiary, at any date of determination, (a) that is a “controlled foreign corporation” as defined in Section 957 of the Code, or (b) that is a Subsidiary of a “controlled foreign corporation” as defined in Section 957 of the Code.

“Excluded Subsidiary” means (i) any Immaterial Subsidiary, (ii) any Unrestricted Subsidiary and (iii) any Excluded Foreign Subsidiary; provided, that, any Subsidiary that has provided a Guarantee (or is otherwise an obligor) of any Material Indebtedness or has granted any Lien to secure any Material Indebtedness shall not be an “Excluded Subsidiary” hereunder.
“Excluded Swap Obligation” shall mean, with respect to any Guarantor, any guarantee of any Obligations under any Secured Swap Agreement if, and only to the extent that and for so long as, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Obligation under any Secured Swap Agreement (or any guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time the guarantee of such Guarantor or the grant of such security interest would otherwise have become effective with respect to such Obligation under a Secured Swap Agreement but for such Guarantor’s failure to constitute an “eligible contract participant” at such time.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) Taxes imposed on (or measured by) its net income or gross profit, franchise Taxes, and branch profits Taxes, in each case imposed by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.18(b)), any United States withholding Tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender’s failure to comply with Section 2.16(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.16(a), (c) or (d), and (d) any U.S. witholding Taxes imposed under FATCA and (d) any backup withholding tax that is required by the Code to be withheld from amounts payable to a Lender other than a Foreign Lender.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

“Financial Performance Covenant” has the meaning set forth in Section 6.12.

“FitBit International Holdings” means FitBit International Holdings, a company organized and existing under the laws of Ireland.

“FitBit IPCo” means FitBit Holdings, a company organized and existing under the laws of Ireland.

“Flood Hazard Property” means any Material Real Estate Asset located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means any Subsidiary other than a Domestic Subsidiary.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Acts” means any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Grantor” has the meaning set forth in the Security Agreement.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business, or customary indemnification obligations entered into in connection with any Acquisition or disposition of assets or of other entities (other than to the extent that the primary obligations that are the subject of such indemnification obligation would be considered Indebtedness hereunder).

“Guaranteed Obligation” has the meaning set forth in Section 7.01.

“Guarantor” means (i) each Subsidiary that is not an Excluded Subsidiary and (ii) with respect to Obligations incurred directly by any Subsidiary, the Borrower.

“Guaranty” means the guaranty of each Guarantor set forth in Article VII.

“Immaterial Subsidiary” means, at any date of determination, a Subsidiary (other than a Restricted Subsidiary) of the Borrower (a) whose total assets as of the most recent available quarterly or year-end financial statements were less than 5% of the total assets of the Borrower and its Restricted Subsidiaries at such date or (b) whose gross revenues as of the most recent available quarterly or year-end
financial statements were less than 5% of the consolidated gross revenues of the Borrower and its Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; provided, that, in no event shall (i) the total assets of all Immaterial Subsidiaries in the aggregate as of the most recent available quarterly or year-end financial statements exceed 10% of the total assets of the Borrower and its Restricted Subsidiaries at such date or (ii) the gross revenues of all Immaterial Subsidiaries in the aggregate as of the most recent available quarterly or year-end financial statements exceed 10% of the consolidated gross revenues of the Borrower and its Restricted Subsidiaries for such period, in each case determined in accordance with GAAP.

“Increase Date” has the meaning set forth in Section 2.19(a).

“Incremental Commitment” has the meaning set forth in Section 2.19(a).

“Incremental Lender” has the meaning set forth in Section 2.19(a).

“Incremental Revolving Lender” has the meaning set forth in Section 2.19(a).

“Incremental Term Lender” has the meaning set forth in Section 2.19(a).

“Indebtedness” of any Person at any date means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of bankers’ acceptances, letters of credit, surety bonds or similar arrangements, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Disqualified Equity Interests in such Person or any Equity Interests in any other Person, or any warrant, right or option to acquire such Equity Interests, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (h) all Guarantees of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above and (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned or acquired by such Person, whether or not such Person has assumed or become liable for the payment of such obligation. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

“Indemnified Taxes” means Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

“Indemnitee” has the meaning set forth in Section 10.3(b).

“Information Documents” means at any time any memorandum, lender’s presentation or other written information, in each case as then supplemented or amended and including any documents attached thereto or incorporated by reference therein, prepared by the Borrower and given to any Lender in connection with the Transactions.
“Intellectual Property” means all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

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

“Intercreditor Agreement” means that certain Intercreditor Agreement, dated as of the Closing Date, by and between the Collateral Agent, the “Administrative Agent” under the Guarantee and Collateral Agreement (as defined in the ABL Credit Agreement) and the Borrower.

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.7.

“Interest Payment Date” means (a) with respect to any ABR Loan, the last day of each March, June, September and December and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period.

“Interest Period” means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Investment” means any loan, advance, extension of credit (by way of Guarantee or otherwise) or capital contributions by the Borrower or any of its Restricted Subsidiaries to any other Person (other than the Borrower or any Guarantor).

“IPO” means a bona fide underwritten sale to the public of common stock of the Borrower pursuant to a registration statement (other than on Form S-8 or any other form relating to securities issuable under any benefit plan of the Borrower or any of its Subsidiaries, as the case may be) that is declared effective by the Securities and Exchange Commission.

“IRS” means the U.S. Internal Revenue Service.

“Issuance Notice” means an Issuance Notice substantially in the form of Exhibit B-2.
“Issuing Bank” means Morgan Stanley Bank, N.A. acting through such of its Affiliates or branches, as it may designate in its capacity as an issuer of standby Letters of Credit hereunder (it being understood that Morgan Stanley Bank, N.A. (whether acting through any of its Affiliates or branches or otherwise) shall only be obligated to issue standby Letters of Credit and shall not be obligated to issue any commercial Letters of Credit hereunder), together with its permitted successors and assigns in such capacity.

“Joint Bookrunner” means Morgan Stanley Senior Funding, Inc., Silicon Valley Bank and SunTrust Robinson Humphrey, Inc., in their capacity as joint lead arrangers and joint bookrunners, and any successors thereto.

“Joint Venture” means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any corporate subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

“Lender Counterparty” means each Lender, each Agent and each of their respective Affiliates counterparty to a Swap Agreement (including any Person who is an Agent or a Lender (and any Affiliate thereof) at the time of entry into such Swap Agreement but subsequently, after entering into a Swap Agreement, ceases to be an Agent or a Lender (or an Affiliate thereof), as the case may be).

“Lenders” means the Persons listed on Schedule 2.1 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption or pursuant to Section 2.19, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Letter of Credit” means a standby letter of credit issued or to be issued by Issuing Bank pursuant to this Agreement in a form approved by Issuing Bank.

“Letter of Credit Sublimit” means the lesser of (a) $10,000,000 and (b) the aggregate unused amount of the Commitments then in effect.

“Letter of Credit Usage” means, as at any date of determination, the sum of (a) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Letters of Credit then outstanding and (b) the aggregate amount of all drawings under Letters of Credit honored by Issuing Bank and not theretofore reimbursed by or on behalf of the Borrower.

“LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the “LIBO Rate” with respect to such Eurodollar Borrowing for such Interest Period shall be the rate at which dollar deposits of $5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor
or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Limited Information’’ means (a) information regarding the terms of, and the Borrower’s compliance with, this Agreement and the other Loan Documents, (b) information concerning the financial position, results of operations and cash flows of the Borrower and its Subsidiaries, including, without limitation, the Information Documents and the financial statements provided by the Borrower pursuant to Sections 3.4(a), 5.1(a) and (b) and any information concerning contingent liabilities, commitments and other exposures that would be material to determinations concerning the creditworthiness of the Borrower and its Subsidiaries, (c) any notice, certificate or other document delivered by the Borrower pursuant to the terms of this Agreement or any other Loan Document, (d) information regarding the Consolidated Total Leverage Ratio or the corporate debt rating (if any) of the Borrower and (e) information regarding the credit support for the credit facility established hereunder, including the Collateral and Guarantors (it being understood that the term “Limited Information” does not include product designs, software and technology, inventions, trade secrets, know-how or other proprietary information of a like nature).

“Loan Documents” means this Agreement (including any amendment hereto or waiver hereunder), the Notes (if any), any Counterpart Agreement, the Collateral Documents, the Perfection Certificate and any documents or certificates executed by the Borrower in favor of Issuing Bank relating to Letters of Credit.

“Loan Parties” means the Borrower and the Guarantors.

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

“Margin Stock” as defined in Regulation U of the Board as in effect from time to time.

“Material Adverse Effect” means a material adverse effect on (a) the operations, business, assets, properties or financial condition of the Borrower and its Subsidiaries, taken as a whole, (b) the rights and remedies of the Administrative Agent or any Lender under any Loan Documents, or of the ability of any Loan Party to perform its obligations under any Loan Documents to which it is a party, or (c) the legality, validity, binding effect or enforceability against any Loan Party of any Loan Documents to which it is a party.

“Material Indebtedness” means (i) Indebtedness outstanding under the ABL Documents and (ii) Indebtedness (other than any Indebtedness under the Loan Documents), or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and its Subsidiaries in a principal amount exceeding $5,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Material Real Estate Asset” means any domestic fee owned Real Estate Asset having a fair market value in excess of $1,000,000.

“Materials of Environmental Concern” means any substance, material or waste that is defined, regulated, governed or otherwise characterized under any Environmental Law as hazardous or toxic or as a pollutant or contaminant (or by words of similar meaning and regulatory effect), any
petroleum or petroleum products, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, molds or fungus, and radioactivity, radiofrequency radiation at levels known to be hazardous to human health and safety.

“Maturity Date” means (a) August 13, 2018 or (b) with respect to the Commitments of Consenting Lenders, as such date may be extended pursuant to Section 2.20.

“Maturity Date Extension Request” means a request by the Borrower, in the form of Exhibit G hereto or such other form as shall be approved by the Administrative Agent, for the extension of the Maturity Date pursuant to Section 2.20.

“Measurement Period” means, at any date of determination, the most recently completed four consecutive fiscal quarters of the Borrower ended on such date.

“Moody’s” means Moody’s Investor Services, Inc.

“Mortgage” means a mortgage, deed of trust or other similar instrument reasonably satisfactory to Collateral Agent.

“Mortgaged Properties” means the real properties as to which the Collateral Agent for the benefit of the Secured Parties shall be granted a Lien pursuant to the Mortgages.

“Multiemployer Plan” means any multiemployer plan as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is or could be an obligation to contribute of) the Borrower or a Subsidiary or an ERISA Affiliate, and each such plan for the five-year period immediately following the latest date on which the Borrower, or a Subsidiary or an ERISA Affiliate contributed to or had an obligation to contribute to such plan.

“New Term Loan Commitment” has the meaning set forth in Section 2.19(a).

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.2 and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-U.S. Plan” means any plan, fund (including, without limitation, any superannuation fund) or other similar program established, contributed to (regardless of whether through direct contributions or through employee withholding) or maintained outside the United States by the Borrower or one or more Subsidiaries primarily for the benefit of employees of the Borrower or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

“Note” means a Revolving Loan Note or a Swing Line Note.

“Obligations” means all amounts owing by any Loan Party to the Agent, any Lender or any Lender Counterparty pursuant to the terms of this Agreement, any Secured Swap Agreement (including payments for early termination of any Secured Swap Agreements) or any other Loan Document (including reimbursement of amounts drawn under Letters of Credit and all interest which
accrues after the commencement of any case or proceeding in bankruptcy after the insolvency of, or for the reorganization of the Borrower or any of its Subsidiaries, whether or not allowed in such case or proceeding); provided that, in no event will the Obligations of any Guarantor include any Excluded Swap Obligations of such Guarantor.

“Obligee Guarantor” has the meaning set forth in Section 7.6.

“OFAC” has the meaning set forth in Section 3.14.

“Operating Documents” means for any Person as of any date, such Person’s constitutional documents, formation documents and/or certificate of incorporation (or equivalent thereof), as certified (if applicable) by such Person’s jurisdiction of formation as of a recent date, and, (a) if such Person is a corporation, its bylaws or memorandum and articles of association (or equivalent thereof) in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“Other Taxes” means any and all present or future stamp, court or documentary taxes or any other excise, property, intangible, recording, filing or similar Taxes which arise from any payment made, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement and the other Loan Documents; excluding, however, such taxes imposed with respect to an assignment (other than (a) such taxes that arise from the enforcement of this Agreement or the other Loan Documents, and (b) such taxes imposed with respect to an assignment that occurs as a result of the Borrower’s request pursuant to Section 2.18(b)).

“Original Lenders” means each of the Joint Bookrunners and Co-Syndication Agents as of the Closing Date, or any of such Person’s Affiliates that is a Lender as of the Closing Date.

“Participant” has the meaning set forth in Section 10.4.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Pension Plan” means any “employee pension benefit plan” within the meaning of Section 3(2) of ERISA, other than a Multiemployer Plan, that is subject to Title IV of ERISA, Section 412 of the Code or Section 302 of ERISA and is maintained or contributed to (or obligated to be contributed) in whole or in part by the Borrower, any Subsidiary or any ERISA Affiliate or with respect to which any of the Borrower, any Subsidiary or any ERISA Affiliate has actual or contingent liability or had any such liability for the five-year period immediately following the latest date on which the Borrower, a Subsidiary or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to such plan.

“Perfection Certificate” means a certificate in form reasonably satisfactory to Collateral Agent that provides information with respect to the real, personal or mixed property of each Loan Party.

“Permitted Acquisition” means any acquisition by Borrower or any of its wholly owned Restricted Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Equity Interests of, or select assets, including without limitation, accounts or a business line or unit or a division of, any Person; provided that the following conditions shall have been satisfied in connection therewith:

(a) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;
(b) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Requirements of Law;

(c) in the case of the acquisition of Equity Interests, all of the Equity Interests (except for any such securities in the nature of directors’ qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Restricted Subsidiary of Borrower in connection with such acquisition shall be owned 100% by Borrower or a wholly owned Restricted Subsidiary, and Borrower shall have taken, or caused to be taken, as of the date such Person becomes a Restricted Subsidiary of Borrower, each of the actions set forth in Section 5.10 and 5.11, as applicable;

(d) any Person or assets or division acquired shall be in the same business or lines of business in which Borrower and/or its Restricted Subsidiaries are engaged or similar, ancillary or reasonably related businesses;

(e) the aggregate Acquisition Consideration paid or payable for all acquisitions of any Persons (or with respect to asset acquisitions, for any asset to be held by any Persons) that are not or do not become Loan Parties shall not exceed $250,000,000 in the aggregate during the term of this Agreement;

(f) after giving effect to such proposed acquisition and the incurrence of any Indebtedness in connection therewith, the Consolidated Total Leverage Ratio, calculated on a Pro Forma Basis as of the last day of the fiscal quarter most recently ended for which financial statements are required to be delivered pursuant to Section 5.1, shall not exceed the maximum Consolidated Total Leverage Ratio permitted under Section 6.12 for such period;

(g) such purchase or acquisition shall not constitute an Unfriendly Acquisition; and

(h) Borrower shall have delivered to Administrative Agent (A) at least three Business Days prior to such proposed acquisition, a description of the aggregate consideration for such acquisition, which shall include the aggregate amount of such consideration that will be Indebtedness hereunder as certified by an Responsible Officer of the Borrower, and (B) promptly upon request by Administrative Agent, (i) a copy of the purchase agreement related to the proposed Permitted Acquisition (and any related documents reasonably requested by Administrative Agent) and (ii) quarterly and annual financial statements of the Person whose Equity Interests or assets are being acquired for the twelve (12) month period immediately prior to such proposed Permitted Acquisition, including any audited financial statements, in each case to the extent such financial statements are reasonably available.

“Permitted Encumbrances” means:

(a) Liens imposed by law for taxes, assessments or governmental charges or levies that are not yet due or are being contested in compliance with Section 5.4;

(b) carriers’, warehousemen’s, mechanics’, materialmen’s, landlord’s, supplier’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 60 days or are being contested in compliance with Section 5.4;
(c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety bonds, performance bonds and other obligations of a like nature, in each case incurred in the ordinary course of business;

(e) judgment liens and deposits to secure obligations under appeal bonds or letters of credit in respect of judgments that do not constitute an Event of Default under Section 8.1(k);

(f) Uniform Commercial Code financing statements filed (or similar filings under applicable law) solely as a precautionary measure in connection with operating leases; and

(g) easements, zoning restrictions, rights-of-way, encroachments and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary.


“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA (other than a Multiemployer Plan).

“Platform Contribution License Agreement” means the Platform Contribution License Agreement, effective as of August 1, 2014, by and between the Borrower and FitBit IPCo.

“Prime Rate” means the rate of interest per annum from time to time published in the “Money Rates” or successor section of The Wall Street Journal as being the “Prime Lending Rate” or, if more than one rate is published as the “Prime Lending Rate”, then the highest of such rates (each change in the Prime Rate to be effective as of the date of publication in The Wall Street Journal of a “Prime Lending Rate” that is different from that published on the preceding Business Day); provided that in the event that The Wall Street Journal shall, for any reason, fail or cease to publish the “Prime Lending Rate”, the Administrative Agent shall choose a reasonably comparable index or source to use as the basis for the “Prime Lending Rate”.

“Pro Forma Basis” with respect to any calculation or determination for a Loan Party for any period, in making such calculation or determination on the specified date of determination (the “Determination Date”) means:

(a) pro forma effect will be given to any Indebtedness incurred (“Incurred”) by such Loan Party or any of its Subsidiaries (including by assumption of then outstanding Indebtedness) or by a Person becoming a Subsidiary after the beginning of the applicable period and on or before the Determination Date to the extent the Indebtedness is outstanding or is to be Incurred on the Determination Date, as if such Indebtedness had been Incurred on the first day of such period;
(b) pro forma calculations of interest on Indebtedness bearing a floating interest rate will be made as if the rate in effect on the Determination Date (taking into account any Swap Agreement applicable to the Indebtedness) had been the applicable rate for the entire reference period; and

(c) pro forma effect will be given to: (i) any acquisition or disposition of companies, divisions or lines of businesses by such Loan Party and its Subsidiaries, including any acquisition or disposition of a company, division or line of business since the beginning of the reference period by a Person that became a Subsidiary after the beginning of the applicable period; and (ii) the discontinuation of any discontinued operations; in each case of clauses (i) and (ii), that have occurred since the beginning of the applicable period and before the Determination Date as if such events had occurred, and, in the case of any disposition, the proceeds thereof applied, on the first day of such period. To the extent that pro forma effect is to be given to an acquisition or disposition of a company, division or line of business, the pro forma calculation will be calculated in good faith by a responsible financial or accounting officer of such Loan Party in accordance with Regulation S-X under the Securities Act, based upon the most recent full fiscal quarter for which the relevant financial information is available.

“Pro Rata Share” means, with respect to any Lender, the percentage obtained by dividing (a) the Revolving Exposure of that Lender by (b) the aggregate Revolving Exposure of all Lenders.

“Projections” has the meaning set forth in Section 5.1(d).

“Qualified ECP Guarantor” means, in respect of any Secured Swap Obligation, each Guarantor that has total assets exceeding $10,000,000 at the time the relevant Guaranty or grant of the relevant Lien becomes effective with respect to such Secured Swap Obligation or constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Qualified IPO” means the issuance by the Borrower of its common Qualified Equity Interests in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act (whether alone or in connection with a secondary public offering) and such Equity Interests are listed on a nationally-recognized stock exchange in the United States.

“Real Estate Asset” means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Loan Party in any real property.

“Refunded Swing Line Loans” as defined in Section 2.3(c).

“Register” has the meaning set forth in Section 10.4.

“Reimbursement Date” has the meaning set forth in Section 2.4(d).

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.
“Required Lenders” means, at any time, Lenders having more than 50% of the aggregate Revolving Exposure at such time; provided that in the circumstance where the aggregate Revolving Exposure is held by two or more Lenders, “Required Lenders” shall include two or more of such Lenders (it being understood that, for purposes of this proviso, two or more Lenders that are Affiliates of each other shall be counted as one Lender). The Commitment and Loans of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Requirement of Law” means as to any Person, the Operating Documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Responsible Officer” means any of the President and Chief Executive Officer, Senior Vice President and Chief Financial Officer of the applicable Loan Party, or any person designated by any such Loan Party in writing to the Administrative Agent from time to time, acting singly.

“Restricted” means, when referring to cash or Cash Equivalents of the Borrower and its Restricted Subsidiaries, that such cash or Cash Equivalents (a) appear (or would be required to appear) as “restricted” on the consolidated balance sheet of the Borrower (unless such appearance is related to the Liens permitted hereunder other than consensual Liens which either are on assets which do not constitute Collateral or rank prior to the Liens in favor of the Secured Parties on the Collateral), (b) are subject to any Lien in favor of any Person other than (i) the Collateral Agent for the benefit of the Secured Parties and (ii) other Liens permitted hereunder other than consensual Liens which either are on assets which do not constitute Collateral or rank prior to the Liens in favor of the Secured Parties on the Collateral or (c) are not otherwise generally available for use by such Person or any Restricted Subsidiary of such Person so long as such Restricted Subsidiary is not prohibited by applicable law, Contractual Obligation or otherwise from transferring such cash or Cash Equivalents to the Borrower.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund, similar deposit or withholding of shares for tax purposes, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower or any option, warrant or other right to acquire any such Equity Interests in the Borrower.

“Restricted Subsidiary” means any Subsidiary other than an Unrestricted Subsidiary.

“Revolving Exposure” means, with respect to any Lender as of any date of determination, (i) prior to the termination of the Commitments, that Lender’s Commitment; and (ii) after the termination of the Commitments, the sum of (a) the aggregate outstanding principal amount of the Revolving Loans of that Lender, (b) in the case of Issuing Bank, the aggregate Letter of Credit Usage in respect of all Letters of Credit issued by that Lender (net of any participations by Lenders in such Letters of Credit), (c) the aggregate amount of all participations by that Lender in any outstanding Letters of Credit or any unreimbursed drawing under any Letter of Credit, (d) in the case of Swing Line Lender, the aggregate outstanding principal amount of all Swing Line Loans (net of any participations therein by other Lenders), and (e) the aggregate amount of all participations by that Lender in any outstanding Swing Line Loans.

“Revolving Loan” means a Loan made by a Lender to the Borrower pursuant to Section 2.1 and/or Section 2.19.
“Revolving Loan Note” means a promissory note in the form of Exhibit D-1, as it may be amended, restated, supplemented or otherwise modified from time to time.

“S&P” means Standard & Poor’s, a Division of The McGraw-Hill Companies, Inc.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Sanctioned Entity” means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, (d) a Person resident in or determined to be resident in a country, in each case, that is subject to, or the target of, a country sanctions program administered and enforced by OFAC.

“Sanctioned Person” means a Person named on the list of Specially Designated Nationals maintained by OFAC.

“Secured Parties” has the meaning set forth in the Security Agreement.

“Secured Swap Agreement” means a Swap Agreement among one or more Loan Parties and a Lender Counterparty.

“Securities Act” means the Securities Act of 1933, as amended.

“Security Agreement” means the Security Agreement to be executed by each Loan Party substantially in the form of Exhibit E, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Security Supplement” has the meaning set forth in the Security Agreement.

“Solvency Certificate” means a Solvency Certificate of a Financial Officer of the Borrower substantially in the form of Exhibit I.

“Solvent” means, with respect to the Loan Parties on a particular date, that on such date (a) the fair value of the present assets of the Loan Parties, taken as a whole, is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of the Loan Parties, taken as a whole, (b) the present fair saleable value of the assets of the Loan Parties, taken as a whole, is not less than the amount that will be required to pay the probable liability of the Loan Parties, taken as a whole, on their debts as they become absolute and matured, (c) the Loan Parties, taken as a whole, do not intend to, and do not believe that they will, incur debts or liabilities (including current obligations and contingent liabilities) beyond their ability to pay such debts and liabilities as they mature in the ordinary course of business and (d) the Loan Parties, taken as a whole, are not engaged in business or a transaction, in relation to which their property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves)
expressed as a decimal established by the Board to which the Administrative Agent is subject for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subordinated Loan Agreement” means that certain Subordinated Loan and Security Agreement, dated as of September 28, 2012, by and between Silicon Valley Bank and the Borrower.

“Subsidiary” means any subsidiary of the Borrower.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent and which is required by GAAP to be consolidated in the consolidated financial statements of the parent.

“Swap Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

“Swing Line Exposure” means, at any time, the aggregate principal amount of all Swing Line Loans outstanding at such time. The Swing Line Exposure of any Lender at any time shall be its Applicable Percentage of the total Swing Line Exposure at such time.

“Swing Line Lender” means Morgan Stanley Bank, N.A., in its capacity as Swing Line Lender hereunder, together with its permitted successors and assigns in such capacity.

“Swing Line Loan” means a Loan made by Swing Line Lender to the Borrower pursuant to Section 2.3.

“Swing Line Note” means a promissory note in the form of Exhibit D-2, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Swing Line Sublimit” means the lesser of (i) $10,000,000, and (ii) the aggregate unused amount of Commitments then in effect.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deducts, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.
“Term Loan” has the meaning set forth in Section 2.19(c).

“Total Utilization of Commitments” means, as at any date of determination, the sum of (a) the aggregate principal amount of all outstanding Revolving Loans (other than Revolving Loans made for the purpose of repaying any Refunded Swing Line Loans or reimbursing Issuing Bank for any amount drawn under any Letter of Credit, but not yet so applied), (b) the aggregate principal amount of all outstanding Swing Line Loans, and (c) the Letter of Credit Usage.

“Transactions” means the execution, delivery and performance by the Loan Parties of each Loan Document to which it is a party, the borrowing of Loans and the use of the proceeds thereof.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate: provided that with respect to Swing Line Loans, such rate shall be determined by reference to the Alternate Base Rate only.

“Unfriendly Acquisition” means any acquisition that has not, at the time of the first public announcement of an offer relating thereto, been approved by the board of directors (or other legally recognized governing body) of the Person to be acquired; except that with respect to any acquisition of a non-U.S. Person, an otherwise friendly acquisition shall not be deemed to be unfriendly if it is not customary in such jurisdiction to obtain such approval prior to the first public announcement of an offer relating to a friendly acquisition.

“Unfunded Pension Liability” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

“Unrestricted” means, when referring to cash or Cash Equivalents, that such cash or Cash Equivalents are not Restricted.

“Unrestricted Subsidiary” means any Subsidiary that at the time of determination has previously been designated, and continues to be, an Unrestricted Subsidiary in accordance with Section 5.10.

“USA Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended from time to time.

“U.S. Government Obligations” means obligations issued or directly and fully guaranteed or insured by the United States of America or by any agent or instrumentality thereof, provided that the full faith and credit of the United States of America is pledged in support thereof.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

“Withholding Agent” means the Borrower and the Administrative Agent.
Section 1.2 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “Eurodollar Loan”). Borrowings also may be classified and referred to by Type (e.g., a “Eurodollar Borrowing”).

Section 1.3 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, amendments and restatements, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words “asset” and “property” shall be construed to have the same meaning and effect to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

Section 1.4 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding the foregoing, all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards No. 159 (ASC 825) (or any similar accounting principle) permitting or requiring a Person to value its financial liabilities or Indebtedness at the fair value thereof.

ARTICLE II
THE CREDITS

Section 2.1 Commitments. Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result in (a) the aggregate outstanding principal amount of such Lender’s Revolving Loans exceeding such Lender’s Commitment or (b) the Total Utilization of Commitments exceeding the total Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans. Each Lender’s Commitment shall expire on the Commitment Termination Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Commitments shall be paid in full no later than such date.
Section 2.2 Revolving Loans and Borrowings.

(a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders in accordance with their respective Applicable Percentages. The failure of any Lender to make any Revolving Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender’s failure to make Revolving Loans as required.

(b) Subject to Section 2.13, each Borrowing of Revolving Loans shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of $1,000,000 and not less than $5,000,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of $1,000,000 and not less than $5,000,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of ten Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 2.3 Swing Line Loans.

(a) During the Availability Period, subject to the terms and conditions hereof, Swing Line Lender may, from time to time in its sole discretion, agree to make Swing Line Loans to the Borrower in the aggregate amount up to but not exceeding the Swing Line Sublimit; provided, that after giving effect to the making of any Swing Line Loan, in no event shall the Total Utilization of Commitments exceed the Commitments then in effect. Amounts borrowed pursuant to this Section 2.3 may be repaid and reborrowed during the Availability Period. Swing Line Lender’s Commitment shall expire on the Commitment Termination Date and all Swing Line Loans and all other amounts owed hereunder with respect to the Swing Line Loans and the Commitments shall be paid in full no later than such date.

(b) Swing Line Loans shall be made in an aggregate minimum amount of $500,000 and integral multiples of $100,000 in excess of that amount.

(c) With respect to any Swing Line Loans which have not been voluntarily prepaid by the Borrower pursuant to Section 2.10, Swing Line Lender may at any time in its sole and absolute discretion, deliver to the Administrative Agent (with a copy to the Borrower) requesting that each Lender holding a Commitment make Revolving Loans that are ABR Loans to the Borrower on such date in an amount equal to the amount of such Swing Line Loans (the “Refunded Swing Line Loans”) outstanding.
on the date such notice is given which Swing Line Lender requests Lenders to prepay. Anything contained in this Agreement to the contrary notwithstanding, (i) the proceeds of such Revolving Loans made by the Lenders other than Swing Line Lender shall be immediately delivered by the Administrative Agent to Swing Line Lender (and not to the Borrower) and applied to repay a corresponding portion of the Refunded Swing Line Loans and (ii) on the day such Revolving Loans are made, Swing Line Lender’s Pro Rata Share of the Refunded Swing Line Loans shall be deemed to be paid with the proceeds of a Revolving Loan made by Swing Line Lender to the Borrower, and such portion of the Swing Line Loans deemed to be so paid shall no longer be outstanding as Swing Line Loans and shall no longer be due under the Swing Line Note of Swing Line Lender but shall instead constitute part of Swing Line Lender’s outstanding Revolving Loans to the Borrower and shall be due under the Revolving Loan Note issued by the Borrower to Swing Line Lender. The Borrower hereby authorizes the Administrative Agent and Swing Line Lender to charge the Borrower’s accounts with the Administrative Agent and Swing Line Lender (up to the amount available in each such account) in order to immediately pay Swing Line Lender the amount of the Refunded Swing Line Loans to the extent the proceeds of such Revolving Loans made by Lenders, including the Revolving Loans deemed to be made by Swing Line Lender, are not sufficient to repay in full the Refunded Swing Line Loans. If any portion of any such amount paid (or deemed to be paid) to Swing Line Lender should be recovered by or on behalf of the Borrower from Swing Line Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be ratably shared among all Lenders in the manner contemplated by Section 2.17.

(d) If for any reason Revolving Loans are not made pursuant to Section 2.3(c) in an amount sufficient to repay any amounts owed to Swing Line Lender in respect of any outstanding Swing Line Loans on or before the third Business Day after demand for payment thereof by Swing Line Lender, each Lender holding a Commitment shall be deemed to, and hereby agrees to, have purchased a participation in such outstanding Swing Line Loans, and in an amount equal to its Pro Rata Share of the applicable unpaid amount together with accrued interest thereon. Upon one Business Day’s notice from Swing Line Lender, each Lender holding a Commitment shall deliver to Swing Line Lender an amount by wire transfer equal to its respective participation in the applicable unpaid amount in same day funds to the account of the Swing Line Lender most recently designated by it for such purpose by notice to the Lenders. In the event any Lender holding a Commitment fails to make available to Swing Line Lender the amount of such Lender’s participation as provided in this paragraph, Swing Line Lender shall be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by Swing Line Lender for the correction of errors among banks and thereafter at the Alternate Base Rate, as applicable.

(e) Notwithstanding anything contained herein to the contrary, (i) each Lender’s obligation to make Revolving Loans for the purpose of repaying any Refunded Swing Line Loans pursuant to the foregoing clause (c) and each Lender’s obligation to purchase a participation in any unpaid Swing Line Loans pursuant to the immediately preceding paragraph shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set off, counterclaim, recoupment, defense or other right which such Lender may have against Swing Line Lender, any Loan Party or any other Person for any reason whatsoever; (B) the occurrence or continuation of a Default or Event of Default; (C) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of any Loan Party; (D) any breach of this Agreement or any other Loan Document by any party thereto; or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided that such obligations of each Lender are subject to the condition that Swing Line Lender had not received prior notice from the Borrower or the Required Lenders that any of the conditions under Section 4.2 to the making of the applicable Refunded Swing Line Loans or other unpaid Swing Line Loans, were not satisfied at the time such Refunded Swing Line Loans or unpaid Swing Line Loans were made; and (ii) Swing Line Lender shall not be obligated to make any Swing Line Loans (A) if it has elected not to do so after the occurrence and during the continuation of
a Default or Event of Default, (B) it does not in good faith believe that all conditions under Section 4.2 to the making of such Swing Line Loan have been satisfied or waived by the Required Lenders or (C) at a time when any Lender is a Defaulting Lender unless Swing Line Lender has entered into arrangements satisfactory to it and the Borrower to eliminate Swing Line Lender’s risk with respect to the Defaulting Lender’s participation in such Swing Line Loan, including by cash collateralizing such Defaulting Lender’s Pro Rata Share of the outstanding Swing Line Loans.

(f) Swing Line Lender may resign as Swing Line Lender upon 30 days prior written notice to the Administrative Agent, the Lenders and the Borrower. Swing Line Lender may be replaced at any time by written agreement among the Borrower, the Administrative Agent and the successor Swing Line Lender. The Administrative Agent shall notify the Lenders of any such replacement of Swing Line Lender. At the time any such replacement or resignation shall become effective, (i) the Borrower shall prepay any outstanding Swing Line Loans made by the resigning or removed Swing Line Lender, (ii) upon such prepayment, the resigning or removed Swing Line Lender shall surrender any Swing Line Note held by it to the Borrower for cancellation, and (iii) the Borrower shall issue, if so requested by the successor Swing Line Loan Lender, a new Swing Line Note to the successor Swing Line Lender, in the principal amount of the Swing Line Loan Sublimit then in effect and with other appropriate insertions. From and after the effective date of any such replacement or resignation, (x) any successor Swing Line Lender shall have all the rights and obligations of a Swing Line Lender under this Agreement with respect to Swing Line Loans made thereafter and (y) references herein to the term “Swing Line Lender” shall be deemed to refer to such successor or to any previous Swing Line Lender, or to such successor and all previous Swing Line Lenders, as the context shall require.

Section 2.4 Issuance of Letters of Credit and Purchase of Participations Therein

(a) During the Availability Period, subject to the terms and conditions hereof, Issuing Bank agrees to issue Letters of Credit (or amend, renew or extend an outstanding Letter of Credit) for the account of the Borrower in the aggregate amount up to but not exceeding the Letter of Credit Sublimit; provided, (i) each Letter of Credit shall be denominated in Dollars; (ii) the stated amount of each Letter of Credit shall not be less than $250,000 or such lesser amount as is acceptable to Issuing Bank; (iii) after giving effect to such issuance, in no event shall the Total Utilization of Commitments exceed the Commitments then in effect; (iv) after giving effect to such issuance, in no event shall the Letter of Credit Usage exceed the Letter of Credit Sublimit then in effect and (v) in no event shall any standby Letter of Credit have an expiration date later than the earlier of (1) five days prior to the Commitment Termination Date and (2) the date which is one year from the date of issuance of such standby Letter of Credit. Subject to the foregoing, Issuing Bank may agree that a standby Letter of Credit will automatically be extended for one or more successive periods not to exceed one year each, unless Issuing Bank elects not to extend for any such additional period and provides notice to such effect to the Borrower as set forth in such Letter of Credit, as applicable; provided, Issuing Bank shall not extend any such Letter of Credit if it has received written notice that an Event of Default has occurred and is continuing at the time Issuing Bank must elect to allow such extension; provided, further, if any Lender is a Defaulting Lender, Issuing Bank shall not be required to issue any Letter of Credit unless Issuing Bank has entered into arrangements satisfactory to it and the Borrower to eliminate Issuing Bank’s risk with respect to the participation in Letters of Credit of the Defaulting Lender, including by cash collateralizing such Defaulting Lender’s Pro Rata Share of the Letter of Credit Usage.

(b) Whenever the Borrower desires the issuance of a Letter of Credit, it shall deliver to the Administrative Agent an Issuance Notice and Application no later than 1:00 p.m. (New York City time) at least five Business Days in advance of the proposed date of issuance. Such Application shall be accompanied by documentary and other evidence of the proposed beneficiary’s identity as may reasonably be requested by the Issuing Bank to enable the Issuing Bank to verify the beneficiary’s identity or to
comply with any applicable laws or regulations, including, without limitation, the USA Patriot Act. Upon satisfaction or waiver of the conditions set forth in Section 4.2, Issuing Bank shall issue the requested Letter of Credit only in accordance with Issuing Bank’s standard operating procedures and UCP 600 or ISP98. Upon issuance of any Letter of Credit or amendment or modification to a Letter of Credit, Issuing Bank shall promptly notify the Administrative Agent, and the Administrative Agent shall promptly notify each Lender with a Commitment of such issuance, which notice shall be accompanied by a copy of such Letter of Credit or amendment or modification to a Letter of Credit and the amount of such Lender’s respective participation in such Letter of Credit pursuant to Section 2.4(e).

(c) In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, Issuing Bank shall be responsible only to accept the documents delivered under such Letter of Credit in accordance with UCP 600 or ISP98. As between the Borrower and Issuing Bank, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by Issuing Bank, by the respective beneficiaries of such Letters of Credit, provided that, such assumption of risk by the Borrower shall not affect any rights that the Borrower may have against such beneficiary. In furtherance and not in limitation of the foregoing, Issuing Bank shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit except as otherwise provided in this clause (c); (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit or of the proceeds thereof; (viii) any consequences arising from causes beyond the control of Issuing Bank, including any Governmental Acts; none of the above shall affect or impair, or prevent the vesting of, any of Issuing Bank’s rights or powers hereunder. Without limiting the foregoing and in furtherance thereof, any action taken or omitted by Issuing Bank under or in connection with the Letters of Credit or any documents and certificates delivered thereunder, if taken or omitted in good faith, shall not give rise to any liability on the part of Issuing Bank to the Borrower. Notwithstanding anything to the contrary contained in this Section 2.4(c), the Borrower shall retain any and all rights it may have against Issuing Bank for any liability arising solely out of the gross negligence or willful misconduct of Issuing Bank as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(d) In the event Issuing Bank has honored a drawing under a Letter of Credit, it shall immediately notify the Borrower and the Administrative Agent, and the Borrower shall reimburse Issuing Bank on or before the Business Day immediately following the date on which such drawing is honored (the “Reimbursement Date”) in an amount in Dollars and in same day funds equal to the amount of such honored drawing; provided, anything contained herein to the contrary notwithstanding, (i) unless the Borrower shall have notified the Administrative Agent and Issuing Bank prior to 1:00 p.m. (New York City time) on the date such drawing is honored that the Borrower intends to reimburse Issuing Bank for the amount of such honored drawing with funds other than the proceeds of Revolving Loans, the Borrower shall be deemed to have given a timely Borrowing Request to the Administrative Agent requesting Lenders with Commitments to make Revolving Loans that are ABR Loans on the Reimbursement Date in an amount in Dollars equal to the amount of such honored drawing, and (ii) subject to satisfaction or waiver of the conditions specified in Section 4.2, Lenders with Commitments shall, on the Reimbursement Date, make Revolving Loans that are ABR Loans in the amount of such
honored drawing, the proceeds of which shall be applied directly by the Administrative Agent to reimburse Issuing Bank for the amount of such honored drawing; and provided further, if for any reason proceeds of Revolving Loans are not received by Issuing Bank on the Reimbursement Date in an amount equal to the amount of such honored drawing, the Borrower shall reimburse Issuing Bank, on demand, in an amount in same day funds equal to the excess of the amount of such honored drawing over the aggregate amount of such Revolving Loans, if any, which are so received. Nothing in this Section 2.4(d) shall be deemed to relieve any Lender with a Commitment from its obligation to make Revolving Loans on the terms and conditions set forth herein, and the Borrower shall retain any and all rights it may have against any such Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.4(d).

(e) Immediately upon the issuance of each Letter of Credit, each Lender having a Commitment shall be deemed to have purchased, and hereby agrees to irrevocably purchase, from Issuing Bank a participation in such Letter of Credit and any drawings honored thereunder in an amount equal to such Lender’s Pro Rata Share of the maximum amount which is or at any time may become available to be drawn thereunder. In the event that the Borrower shall fail for any reason to reimburse Issuing Bank as provided in Section 2.4(d), Issuing Bank shall promptly notify the Administrative Agent of such event. The Administrative Agent shall then promptly notify each Lender with a Commitment of the unreimbursed amount of such honored drawing and of such Lender’s respective participation therein based on such Lender’s Pro Rata Share of the Commitments. Each Lender with a Commitment shall make available to the Administrative Agent, for the account of Issuing Bank, an amount equal to its respective participation, in Dollars and in same day funds, no later than 12:00 p.m. (New York City time) on the first Business Day after the date notified by Issuing Bank. In the event that any Lender with a Commitment fails to make available to the Administrative Agent on such Business Day the amount of such Lender’s participation in such Letter of Credit as provided in this Section 2.4(e), Issuing Bank shall be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by Issuing Bank for the correction of errors among banks and thereafter at the Alternate Base Rate. Nothing in this Section 2.4(e) shall be deemed to prejudice the right of any Lender with a Commitment to recover from Issuing Bank any amounts made available by such Lender to Issuing Bank pursuant to this Section 2.4 in the event that the payment with respect to a Letter of Credit in respect of which payment was made by such Lender constituted gross negligence or willful misconduct (as determined by a final, non-appealable judgment of a court of competent jurisdiction) on the part of Issuing Bank. In the event Issuing Bank shall have been reimbursed by other Lenders pursuant to this Section 2.4(e) for all or any portion of any drawing honored by Issuing Bank under a Letter of Credit, such Issuing Bank shall distribute to the Administrative Agent, who shall then distribute to each Lender which has paid all amounts payable by it under this Section 2.4(e) with respect to such honored drawing, such Lender’s Pro Rata Share of all payments subsequently received by Issuing Bank from the Borrower in reimbursement of such honored drawing when such payments are received. Any such distribution shall be made to a Lender at its primary address set forth in its Administrative Questionnaire or at such other address as such Lender may request.

(f) The obligation of the Borrower to reimburse Issuing Bank for drawings honored under the Letters of Credit issued by it and to repay any Revolving Loans made by Lenders pursuant to Section 2.4(d) and the obligations of Lenders under Section 2.4(e) shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances including any of the following circumstances: (i) any lack of validity or enforceability of any Letter of Credit; (ii) the existence of any claim, set off, defense or other right which the Borrower or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), Issuing Bank, Lender or any other Person or, in the case of a Lender, against the Borrower, whether in connection herewith, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Borrower or one of its Restricted
Subsidiaries and the beneficiary for which any Letter of Credit was procured); (iii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iv) payment by Issuing Bank under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit; (v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of the Borrower or any of its Restricted Subsidiaries; (vi) any breach hereof or any other Loan Document by any party thereto; (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or (viii) the fact that an Event of Default or a Default shall have occurred and be continuing.

(g) Without duplication of any obligation of the Borrower under Section 10.3, in addition to amounts payable as provided herein, the Borrower hereby agrees to protect, indemnify, pay and save harmless Issuing Bank from and against any and all claims, demands, liabilities, damages and losses, and all reasonable and documented costs, charges and out-of-pocket expenses (including reasonable fees, out-of-pocket expenses and disbursements of one primary counsel (with exceptions for conflicts of interest) and one local counsel in each relevant jurisdiction), which Issuing Bank may incur or be subject to as a consequence, direct or indirect, of (i) the issuance of any Letter of Credit by Issuing Bank, other than as a result of the gross negligence or willful misconduct of Issuing Bank as determined by a final, non-appealable judgment of a court of competent jurisdiction, or (ii) the failure of Issuing Bank to honor a drawing under any such Letter of Credit as a result of any Governmental Act.

(h) An Issuing Bank may resign as Issuing Bank upon 60 days prior written notice to the Administrative Agent, the Lenders and the Borrower. An Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank (provided that no consent will be required if the replaced Issuing Bank has no Letters of Credit or reimbursement obligations with respect thereto outstanding) and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of such Issuing Bank. From and after the effective date of any such replacement or resignation, (i) any successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term “Issuing Bank” shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement or resignation of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto to the extent that Letters of Credit issued by it remain outstanding and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement or resignation, but shall not be required to issue additional Letters of Credit.

(i) If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with Letter of Credit Usage representing greater than 50% of the total Letter of Credit Usage) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to 105% of Letter of Credit Usage as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 8.1(h) or (i). Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative 34
Agent and at the Borrower’s risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for any disbursements under Letters of Credit made by it and for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the Letter of Credit Usage at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with Letter of Credit Usage representing greater than 50% of the total Letter of Credit Usage), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within five Business Days after all Events of Default have been cured or waived.

Section 2.5 Requests for Borrowings. To request a Borrowing (other than an issuance of a Letter of Credit), the Borrower shall notify the Administrative Agent of such request in writing (a) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of the proposed Borrowing, (b) in the case of an ABR Borrowing, not later than 12:00 noon, New York City time, one Business Day prior to the date of the proposed Borrowing or (c) in the case of a Borrowing of a Swing Line Loan, not later than 12:00 noon, New York City time, on the date of the proposed Borrowing. Each such written Borrowing Request shall be irrevocable and shall be confirmed promptly by delivery to the Administrative Agent of a written Borrowing Request in substantially the form of Exhibit B-1 attached hereto and signed by the Borrower. Each such written Borrowing Request shall specify the following information in compliance with Section 2.2 and Section 2.3:

(i) the aggregate amount of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) with respect to Revolving Loans, whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period”; and

(v) the location and number of the account or accounts to which funds are to be disbursed, which shall comply with the requirements of Section 2.6.

If no election as to the Type of Borrowing is specified with respect to Revolving Loans, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender’s Loan to be made as part of the requested Borrowing.

Section 2.6 Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 Noon, New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account or accounts designated by the Borrower in the applicable Borrowing Request.
Section 2.7 Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request; provided that Swing Line Loans shall be made and maintained as ABR Borrowings only.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election in writing by the time that a Borrowing Request would be required under Section 2.3 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such written request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written request (an “Interest Election Request”) in substantially the form of Exhibit C attached hereto and signed by the Borrower.

(c) Each written Interest Election Request shall specify the following information in compliance with Section 2.2:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and
(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term “Interest Period.”

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender’s portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be continued as a Eurodollar Borrowing with an Interest Period of one month’s duration. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing, (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

Section 2.8 Termination and Reduction of Commitments.

(a) Unless previously terminated, the Commitments shall terminate on the Commitment Termination Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of $1,000,000 and not less than $5,000,000 and (ii) the Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.10, the sum of the aggregate outstanding principal amount of Loans would exceed the total Commitments.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or another transaction, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be applied to the Lenders in accordance with their respective Applicable Percentages.

Section 2.9 Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the Maturity Date.
(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender’s share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein (absent manifest error); provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a Note. In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns). Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 10.4) be represented by one or more Notes in such form payable to the order of the payee named therein (or, if such Note is a registered note, to such payee and its registered assigns).

Section 2.10 Prepayment of Loans.

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (subject to the requirements of Section 2.15), subject to prior notice in accordance with this Section. The Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy or delivery of written notice) or telecopy of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment or (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.8, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.8. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.2.

(b) The Borrower shall from time to time prepay first, the Swing Line Loans, and second, the Revolving Loans to the extent necessary so that the Total Utilization of Commitments shall not at any time exceed the Commitments then in effect.

(c) Each prepayment of a Borrowing shall be applied ratably to the Loans of the Lenders in accordance with their respective Applicable Percentages. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.12 and any costs incurred as contemplated by Section 2.15.
Section 2.11 Fees

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender (other than any Defaulting Lender) a commitment fee, which shall accrue at the applicable Commitment Fee Rate on the daily amount of the unused Commitment of such Lender during the period from and including the date hereof to but excluding the Commitment Termination Date. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof; provided that any commitment fees accruing after the date on which the Commitments terminate shall be payable on demand. The unused portion of the Commitments of any Lender, for purposes of this calculation, shall equal (i) the amount of Commitments of such Lender, minus (ii) the outstanding Revolving Loans of such Lender and the aggregate amount of all participations by such Lender or any outstanding Letters of Credit or any unreimbursed drawings under any Letter of Credit. For the avoidance of doubt, the outstanding amount of any Swingline Loans shall not be counted towards or considered usage of the Commitments for purposes of determining the commitment fee. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) On the Closing Date, the Borrower agrees to pay to the Administrative Agent for the account of each Lender an upfront fee equal to 0.50% of the aggregate principal amount of the Commitments, payable to each Lender pro rata in accordance with the amount of such Lender’s Commitment.

(c) The Borrower agrees to pay to the Administrative Agent for the account of each Lender (other than any Defaulting Lender) letter of credit fees equal to (A) the Applicable Margin for Revolving Loans that are Eurodollar Loans, multiplied by (B) the average aggregate daily maximum amount available to be drawn under all such Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination). Such letter of credit fees shall be payable in arrears on the last day of March, June, September and December of each year, commencing on the first such date to occur after the date hereof, and shared proportionally by the Lenders in accordance with their Applicable Percentages.

(d) The Borrower agrees to pay directly to Issuing Bank, for its own account, the following fees:

(i) a fronting fee equal to 0.125%, per annum, multiplied by the average aggregate daily maximum amount available to be drawn under all Letters of Credit (determined as of the close of business on any date of determination); and

(ii) such documentary and processing charges for any issuance, amendment, transfer or payment of a Letter of Credit as are in accordance with Issuing Bank’s standard schedule for such charges and as in effect at the time of such issuance, amendment, transfer or payment, as the case may be.

Such fronting fee shall be paid on a quarterly basis in arrears and is due and payable on the second Business Day after the end of each March, June, September and December in respect of the...
most recently ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit expiration date and thereafter on demand.

(e) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(f) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, in the case of commitment fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

Section 2.12 Interest

(a) The Loans comprising each ABR Borrowing (including all Swing Line Loans) shall bear interest at the Alternate Base Rate plus the Applicable Margin.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) Notwithstanding the foregoing, (i) at all times when an Event of Default listed in Section 8.1(a) has occurred hereunder and is continuing and (ii) at the request of the Required Lenders at any time that any other Event of Default has occurred and is continuing, all amounts outstanding hereunder shall bear interest, after as well as before judgment, at a rate per annum equal to (i), in the case of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

(f) The Borrower agrees to pay to Issuing Bank, with respect to drawings honored under any Letter of Credit, interest on the amount paid by Issuing Bank in respect of each such honored drawing from the date such drawing is honored to but excluding the date such amount is reimbursed by or on behalf of the Borrower at a rate equal to (i) for the period from the date such drawing is honored to but excluding the applicable Reimbursement Date, the rate of interest otherwise payable hereunder with respect to Revolving Loans that are ABR Loans, and (ii) thereafter, a rate which is 2% per annum in excess of the rate of interest otherwise payable hereunder with respect to Revolving Loans that are ABR Loans.
Interest payable pursuant to Section 2.12(f) shall be computed on the basis of a 365/366 day year for the actual number of days elapsed in the period during which it accrues, and shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by Issuing Bank of any payment of interest pursuant to Section 2.12(f), Issuing Bank shall distribute to the Administrative Agent, for the account of each Lender, out of the interest received by Issuing Bank in respect of the period from the date such drawing is honored to but excluding the date on which Issuing Bank is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Revolving Loans), the amount that such Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit. In the event Issuing Bank shall have been reimbursed by Lenders for all or any portion of such honored drawing, Issuing Bank shall distribute to the Administrative Agent, for the account of each Lender which has paid all amounts payable by it under Section 2.4(e) with respect to such honored drawing such Lender’s Pro Rata Share of any interest received by Issuing Bank in respect of that portion of such honored drawing so reimbursed by Lenders for the period from the date on which Issuing Bank was so reimbursed by Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by the Borrower.

Section 2.13 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

Section 2.14 Increased Costs; Illegality.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, liquidity, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or Issuing Bank; or
and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or Issuing Bank such additional amount or amounts as will compensate such Lender or Issuing Bank for such additional costs incurred or reduction suffered.

(b) If any Lender or Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender’s or Issuing Bank’s capital or on the capital of such Lender’s or Issuing Bank’s holding company, if any, as a consequence of this Agreement, the Commitments hereunder, the Loans made by such Lender or participations in Letters of Credit held by such Lender to a level below that which such Lender or Issuing Bank or such Lender’s or Issuing Bank’s holding company could have achieved but for such Change in Law (taking into consideration such Lender’s or Issuing Bank’s policies and the policies of such Lender’s or Issuing Bank’s holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Bank or such Lender’s or Issuing Bank’s holding company for any such reduction suffered.

(c) A certificate of a Lender or Issuing Bank setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or Issuing Bank or its respective holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or Issuing Bank the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender’s or Issuing Bank’s right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or Issuing Bank notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender’s or Issuing Bank’s intention to claim compensation therefore; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive (or has retroactive effect), then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) If any Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender to make, maintain or fund Eurodollar Loans, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue
Eurodollar Loans or to convert ABR Loans to Eurodollar Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to ABR Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 2.15 Break Funding Payments. In the event of (a) the payment or prepayment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.10(b) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.18, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

Section 2.16 Taxes.
(a) Any and all payments by or on account of any obligation of the Borrower hereunder shall be made free and clear of and without deduction or withholding for any Indemnified Taxes or Other Taxes, except as required by law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall make such deduction or withholding and timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax or Other Tax, then the sum payable by the Borrower shall be increased as necessary so that after making such deduction or withholding (including such deductions and withholdings applicable to additional sums payable under this Section) the Administrative Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deduction or withholding been made.
(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.
(c) The Borrower shall indemnify the Administrative Agent and each Lender, within 10 days after demand therefore, for the full amount of any Indemnified Taxes or Other Taxes paid by the
Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Foreign Lender, if it is legally entitled to do so, shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) executed originals of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States of America is a party;

(ii) executed originals of Internal Revenue Service Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN;

(iv) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a portfolio interest certificate in compliance with Section 2.16(e)(iii), IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a certificate in compliance with Section 2.16(e)(iii) on behalf of such partner or partners; or

(v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made unless, in the Foreign Lender’s sole determination exercised in good faith, such completion would subject such Foreign Lender to any material cost or expense or would materially prejudice the legal or commercial position of such Foreign Lender.

In addition, any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this
Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

(f) If a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender fails to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such other documentation reasonably requested by the Borrower and the Administrative Agent sufficient for the Administrative Agent and the Borrower to comply with their obligations under FATCA and to determine that such Lender has complied with such applicable reporting requirements or to determine the amount to deduct and withhold from such payment.

(g) If any Lender or the Administrative Agent determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the applicable Loan Party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, however, that (w) any Lender or the Administrative Agent may determine, in its sole discretion exercised in good faith consistent with the policies of such Lender or the Administrative Agent, whether to seek a refund for any Taxes; (x) any Taxes that are imposed on a Lender or the Administrative Agent as a result of a disallowance or reduction of any Tax refund with respect to which such Lender or the Administrative Agent has made a payment to the Loan Party pursuant to this Section shall be treated as an Indemnified Tax for which the Loan Party is obligated to indemnify such Lender or the Administrative Agent pursuant to this Section without any exclusions or defenses; (y) nothing in this Section shall require the Lender or the Administrative Agent to disclose any confidential information to a Loan Party (including, without limitation, its tax returns); and (z) neither any Lender nor the Administrative Agent shall be required to pay any amounts pursuant to this Section for so long as a Default or Event of Default exists.

(h) For purposes of this Section 2.16, the term “Lender” includes any Issuing Bank.

Section 2.17 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or of amounts payable under Section 2.14, Section 2.15 or Section 2.16, or otherwise) prior to 12:00 noon, New York City time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at 1 Pierrepont Plaza, 7th Floor, Brooklyn, New York, 11201 and except that payments pursuant to Section 2.14, Section 2.15 Section 2.16 and Section 10.3 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment or performance hereunder shall be due on a day that is not a Business Day, the date for payment or performance shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.
(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.18 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender (which term shall include Issuing Bank for purposes of this Section 2.18(a)) requests compensation under Section 2.14, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices,
branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.14 or Section 2.16, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender (which term shall include Issuing Bank for purposes of this Section 2.18(b)) requests compensation under Section 2.14, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, (iii) any Lender is a Defaulting Lender or a Non-Consenting Lender or (iv) any Lender is a Declining Lender under Section 2.20, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.4), all its interests, rights and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.14 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments, (iv) such assignment does not conflict with applicable law and (v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, (x) the applicable assignee shall have consented to, or shall consent to, the applicable amendment, waiver or consent and (y) the Borrower exercises its rights pursuant to this clause (b) with respect to all Non-Consenting Lenders relating to the applicable amendment, waiver or consent. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 2.19 Incremental Commitments.

(a) Borrower may by written notice to Administrative Agent elect to request (A) at any time prior to the Commitment Termination Date, an increase to the existing Commitments (each, a “Commitment Increase”) and/or (B) the establishment of one or more new term loan commitments (the “New Term Loan Commitments” and, together with each Commitment Increase, the “Incremental Commitments”) up to an aggregate amount not to exceed $25,000,000, in increments not less than $10,000,000 individually, and integral multiples of $5,000,000 in excess of that amount. Each such notice shall specify (A) the date (each, an “Increase Date”) on which Borrower proposes that the Commitment Increase or New Term Loan Commitments, as applicable, shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to Administrative Agent and (B) the identity of each Lender or other Person (other than the Borrower or an Affiliate thereof or any natural person) reasonably acceptable to the Administrative Agent, Issuing Bank and Swing Line Lender (each, an “Incremental Revolving Lender” or “Incremental Term Lender”, as applicable, and collectively, the “Incremental Lenders”) to whom Borrower proposes any portion of such Commitment Increase or New Term Loan Commitments, as applicable, be allocated and the amounts of such allocations; provided that Administrative Agent shall have no obligation to arrange such Commitment Increase or New Term Loan Commitments unless otherwise agreed in writing and any Lender approached to provide all or a portion of the Commitment Increase or New Term Loan Commitments may elect or decline, in its sole discretion, to provide a Commitment Increase or a New Term Loan Commitment.
Such Commitment Increase or New Term Loan Commitments shall become effective, as of such Increase Date; provided that (1) no Default or Event of Default shall exist on such Increase Date before or after giving effect to such Incremental Commitments; (2) after giving effect to the incurrence of such Incremental Commitments and the application of proceeds therefrom, and assuming a full drawing of such New Term Loan Commitments or Commitment Increase as applicable, but without “netting” the cash proceeds thereof, the Consolidated Total Leverage Ratio, calculated on a Pro Forma Basis as of the last day of the fiscal quarter most recently ended for which financial statements are required to be delivered pursuant to Section 5.1, shall not exceed the maximum Consolidated Total Leverage Ratio permitted under Section 6.12 for such period, (3) both before and after giving effect to the incurrence of such Incremental Commitments and the application of proceeds therefrom, each of the conditions set forth in Section 4.2 shall be satisfied (except as otherwise agreed by the Administrative Agent and each applicable Incremental Lender); (4) the Commitment Increase or New Term Loan Commitments, as applicable, shall be effected pursuant to one or more joinder agreements in form and substance reasonably satisfactory to the Borrower and the Administrative Agent executed and delivered by Borrower, the applicable Incremental Lender, and Administrative Agent; (5) Borrower shall make any payments required pursuant to Section 2.15 in connection with such Incremental Commitments; and (6) Borrower shall deliver or cause to be delivered any legal opinions or other documents reasonably requested by Administrative Agent in connection with any such transaction.

(b) On any Increase Date on which a Commitment Increase is effected, subject to the satisfaction of the foregoing terms and conditions, (a) each Lender with a Commitment shall assign to each of the Incremental Revolving Lenders, and each of the Incremental Revolving Lenders shall purchase from each of the Lenders, at the principal amount thereof (together with accrued interest), such interests in the Revolving Loans outstanding on such Increase Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Loans will be held by existing Lenders and Incremental Lenders ratably in accordance with their Commitments after giving effect to such Commitment Increase, (b) each Commitment Increase shall be deemed for all purposes a Commitment and each Loan made thereunder shall be deemed, for all purposes, a Revolving Loan and (c) each Incremental Revolving Lender shall become a Lender with respect to its Commitment Increase and all matters relating thereto.

(c) On any Increase Amount Date on which any New Term Loan Commitments are effective, subject to the satisfaction of the foregoing terms and conditions, (i) each Incremental Term Lender shall make a Loan to Borrower (a “Term Loan”) in an amount equal to its New Term Loan Commitment, and (ii) each New Term Lender shall become a Lender hereunder with respect to the New Term Loan Commitments and the Term Loans made pursuant thereto.

(d) Administrative Agent shall notify Lenders promptly upon receipt of Borrower’s notice of each Increase Date and in respect thereof (y) the Commitment Increase and the Incremental Revolving Lenders or the New Term Loan Commitments and the Incremental Term Lenders, as applicable, and (z) in the case of each notice to any Lender, the respective interests in such Lender’s Revolving Loans, in each case subject to the assignments contemplated by this Section.

(e) The terms and provisions of Loans made pursuant to the Incremental Commitments shall be as follows:

(i) The terms and provisions of any Commitment Increase and any loans made thereunder shall be identical to the terms of the Revolving Loans and Commitments;

(ii) The terms and provisions of the Term Loans and New Term Loan Commitments (a) shall not be secured by any assets other than the Collateral, (b) shall not be guaranteed by Persons other than the Guarantors, and (c) shall be otherwise be on terms reasonably satisfactory to Administrative Agent;
(iii) any Incremental Commitments shall rank pari passu or junior in right of payment in respect of the Collateral and with the Obligations in respect of the existing Commitments; provided, that any Incremental Commitment that ranks junior in right of payment in respect of the Collateral or with the Obligations shall be subject to customary intercreditor arrangements reasonably acceptable to the Administrative Agent;

(iv) the Term Loans shall not have scheduled principal repayments in excess of 2.5% of the original principal amount of such Term Loans per calendar year; and

(v) the maturity date applicable to any Term Loans shall be no earlier than the Maturity Date.

(f) Notwithstanding anything to the contrary in Section 10.2, each joinder agreement contemplated hereby may, without the consent of any other Lenders or the Required Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of Administrative Agent and the Borrower to effect the provision of this Section 2.19.

Section 2.20 Extension of Maturity Date.

(a) The Borrower may, by delivery of a Maturity Date Extension Request to the Administrative Agent (which shall promptly deliver a copy thereof to each of the Lenders) not less than 30 days prior to the then existing maturity date for Commitments hereunder (the “Existing Maturity Date”), request that the Lenders extend the Existing Maturity Date in accordance with this Section; provided that the Borrower may not make more than two Maturity Date Extension Requests during the term of this Agreement. Each Maturity Date Extension Request shall (i) specify the date to which the Maturity Date is sought to be extended; provided that such date is no more than one calendar year from the then scheduled Maturity Date, (ii) specify the changes, if any, to the Applicable Margin to be applied in determining the interest payable on Loans of, and fees payable hereunder to, Consenting Lenders (as defined below) in respect of that portion of their Commitments (and related Loans) extended to such new Maturity Date and the time as of which such changes will become effective (which may be prior to the Existing Maturity Date), and (iii) specify any other amendments or modifications to this Agreement to be effected in connection with such Maturity Date Extension Request, provided that no such changes or modifications requiring approvals pursuant to Section 10.2(b) shall become effective prior to the then existing Maturity Date unless such other approvals have been obtained. In the event a Maturity Date Extension Request shall have been delivered by the Borrower, each Lender shall have the right to agree or not agree to the extension of the Existing Maturity Date and other matters contemplated thereby on the terms and subject to the conditions set forth therein (each Lender agreeing to the Maturity Date Extension Request being referred to herein as a “Consenting Lender” and each Lender not agreeing thereto being referred to herein as a “Declining Lender”), which right may be exercised by written notice thereof, specifying the maximum amount of the Commitment of such Lender with respect to which such Lender agrees to the extension of the Maturity Date, delivered to the Borrower (with a copy to the Administrative Agent) not later than a day to be agreed upon by the Borrower and the Administrative Agent following the date on which the Maturity Date Extension Request shall have been delivered by the Borrower (it being understood that any Lender that shall have failed to exercise such right as set forth above shall be deemed to be a Declining Lender). If a Lender elects to extend only a portion of its then existing Commitment, it will be deemed for purposes hereof to be a Consenting Lender in respect of such extended portion and a Declining Lender in respect of the remaining portion of its Commitment. If Consenting Lenders shall have agreed to such Maturity Date Extension Request in respect of
Commitments held by them, then, subject to paragraph (d) of this Section, on the date specified in the Maturity Date Extension Request as the effective date thereof (the "Extension Effective Date"), (i) the Existing Maturity Date of the applicable Commitments shall, as to the Consenting Lenders, be extended to such date as shall be specified therein, (ii) the terms and conditions of the Commitments of the Consenting Lenders (including interest and fees payable in respect thereof), shall be modified as set forth in the Maturity Date Extension Request and (iii) such other modifications and amendments hereto specified in the Maturity Date Extension Request shall (subject to any required approvals (including those of the Required Lenders having been obtained), except that any such other modifications and amendments that do not take effect until the Existing Maturity Date shall not require the consent of any Lender other than the Required Lenders and the Consenting Lenders) become effective.

(b) Notwithstanding the foregoing, the Borrower shall have the right, in accordance with the provisions of Sections 2.18 and 9.4, at any time prior to the Existing Maturity Date, to replace a Declining Lender (for the avoidance of doubt, only in respect of that portion of such Lender’s Commitments subject to a Maturity Date Extension Request that it has not agreed to extend) with a Lender or other financial institution that will agree to such Maturity Date Extension Request, and any such replacement Lender shall for all purposes constitute a Consenting Lender in respect of the Commitment assigned to and assumed by it on and after the effective time of such replacement.

(c) If a Maturity Date Extension Request has become effective hereunder, on the Existing Maturity Date, the Commitment of each Declining Lender shall, to the extent not assumed, assigned or transferred as provided in paragraph (b) of this Section, terminate, and the Borrower shall repay all the Loans of each Declining Lender, to the extent such Loans shall not have been so purchased, assigned and transferred, in each case together with accrued and unpaid interest and all fees and other amounts owing to such Declining Lender hereunder (accordingly, the Commitment of any Consenting Lender shall, to the extent the amount of such Commitment exceeds the amount set forth in the notice delivered by such Lender pursuant to paragraph (a) of this Section and to the extent not assumed, assigned or transferred as provided in paragraph (b) of this Section, be permanently reduced by the amount of such excess, and, to the extent not assumed, assigned or transferred as provided in paragraph (b) of this Section, the Borrower shall prepay the proportionate part of the outstanding Loans of such Consenting Lender, in each case together with accrued and unpaid interest thereon but excluding the Existing Maturity Date and all fees and other amounts payable in respect thereof or prior to the Existing Maturity Date), it being understood that such repayments may be funded with the proceeds of new Borrowings made simultaneously with such repayments by the Consenting Lenders, which such Borrowings shall be made ratably by the Consenting Lenders in accordance with their extended Commitments.

(d) Notwithstanding the foregoing, no Maturity Date Extension Request shall become effective hereunder unless, on the Extension Effective Date, the conditions set forth in Section 4.2 shall be satisfied (with all references in such Section to a Borrowing being deemed to be references to such Maturity Date Extension Request) and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Financial Officer.

(e) Notwithstanding any provision of this Agreement to the contrary, it is hereby agreed that no extension of an Existing Maturity Date in accordance with the express terms of this Section, or any amendment or modification of the terms and conditions of the Commitments and Loans of the Consenting Lenders effected pursuant thereto, shall be deemed to (i) violate the last sentence of Section 2.8(c) or Section 2.17(c) or any other provision of this Agreement requiring the ratable reduction of Commitments or the ratable sharing of payments or (ii) require the consent of all Lenders or all affected Lenders under Section 10.2(b).
The Borrower, the Administrative Agent, the Required Lenders and the Consenting Lenders may enter into an amendment to this Agreement to effect such modifications as may be necessary to reflect the terms of any Maturity Date Extension Request that has become effective in accordance with the provisions of this Section.

Section 2.21 Defaulting Lenders.

(a) Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) such Defaulting Lender’s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and in Section 10.2;

(ii) if any Swing Line Exposure or Letter of Credit Usage exists at the time such Lender becomes a Defaulting Lender then:

(A) all or any part of the Swing Line Exposure and Letter of Credit Usage of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent that (x) the sum of the Total Utilization of Commitments of all non-Defaulting Lenders plus such Defaulting Lender’s Swing Line Exposure and Letter of Credit Usage does not exceed the total of all non-Defaulting Lenders’ Commitments, (y) the sum of any non-Defaulting Lender’s Total Utilization of Commitments plus its Pro Rata Share of such Defaulting Lender’s Swing Line Exposure and Letter of Credit Usage does not exceed such non-Defaulting Lender’s Revolving Commitment and (z) the conditions set forth in Section 4.2 are satisfied at such time;

(B) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one Business Day following notice by the Administrative Agent (x) first, prepay such Swing Line Exposure and (y) second, cash collateralize for the benefit of Issuing Bank only the Borrower’s obligations corresponding to such Defaulting Lender’s Letter of Credit Usage (after giving effect to any partial reallocation pursuant to clause (Ai) above) in accordance with the procedures set forth in Section 2.4(i) for so long as such Letter of Credit Usage is outstanding;

(C) if the Borrower cash collateralizes any portion of such Defaulting Lender’s Letter of Credit Usage pursuant to clause (B) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.11(c) with respect to such Defaulting Lender’s Letter of Credit Usage during the period such Defaulting Lender’s Letter of Credit Usage is cash collateralized;

(D) if the Letter of Credit Usage of the non-Defaulting Lenders is reallocated pursuant to clause (A) above, then the fees payable to the Lenders pursuant to Section 2.11(a) and Section 2.11(c) shall be adjusted in accordance with such non-Defaulting Lenders’ Applicable Percentages; and

(E) if all or any portion of such Defaulting Lender’s Letter of Credit Usage is neither reallocated nor cash collateralized pursuant to clause (A) or (B) above, then, without prejudice to any rights or remedies of Issuing Bank or any other Lender hereunder, all letter of credit fees payable under Section 2.11(c) with respect to such Defaulting Lender’s Letter of Credit Usage shall be payable to Issuing Bank until and to the extent that such Letter of Credit Usage is reallocated and/or cash collateralized;
(iii) so long as such Lender is a Defaulting Lender, the Swing Line Lender shall not be required to fund any Swing Line Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender’s then outstanding Letter of Credit Usage will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by Borrower in accordance with Section 2.21(a)(ii), and participating interests in any newly made Swing Line Loan or any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.21(a)(ii)(A) (and such Defaulting Lender shall not participate therein);

(iv) any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8.1 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 8.1 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank or Swingline Lender hereunder; third, to cash collateralize Issuing Banks’ Letter of Credit Usage with respect to such Defaulting Lender in accordance with Section 2.4(i); fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released pro rata in order to (x) satisfy such Defaulting Lender’s potential future funding obligations with respect to Loans under this Agreement and (y) cash collateralize Issuing Banks’ future Letter of Credit Usage with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.4(i); sixth, to the payment of any amounts owing to the Lenders, Issuing Bank or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, Issuing Bank or Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or Letters of Credit disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans or Letters of Credit were made when the conditions set forth in Section 4.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of or Letters of Credit disbursements owed to all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans are held by the Lenders pro rata in accordance with the Commitments (without giving effect to Section 2.21(a)(ii)(A)). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto; and
(v) No Defaulting Lender shall be entitled to receive any commitment fee pursuant to Section 2.11 for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(l) If (i) any Lender becomes a Defaulting Lender or (ii) the Swing Line Lender or Issuing Bank has a good faith belief that any Lender will become a Defaulting Lender, the Swing Line Lender shall not be required to fund any Swing Line Loan and Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless the Swing Line Lender or the Issuing Bank, as the case may be, shall have entered into arrangements with the Borrower or such Lender, reasonably satisfactory to the Swing Line Lender or the Issuing Bank, as the case may be, to defease any risk to it in respect of such Lender hereunder.

(m) If the Borrower, Swing Line Lender, Issuing Bank and the Administrative Agent each agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders (other than Swing Line Loans) or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their respective Applicable Percentages, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender’s having been a Defaulting Lender.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Lenders that:

Section 3.1 Organization. Each of the Borrower and its Restricted Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and in good standing under the laws of each jurisdiction where the failure to be so qualified could reasonably be expected to have a Material Adverse Effect.

Section 3.2 Powers; Authorization; Enforceability; Government Approvals. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No Governmental Approval or consent or authorization of, filing with, notice to or other act by or in respect of, any other Person is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) Governmental Approvals, consents, authorizations, filings and notices described in Schedule 3.2, which Governmental Approvals, consents, authorizations, filings and notices have been obtained or made and are in full force and effect, and (ii) the filings referred to in Section 3.18. Each Loan Document has been
duly executed and delivered on behalf of each Loan Party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors’ rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

Section 3.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the borrowings hereunder and the use of the proceeds thereof will not violate any material Requirement of Law (except as set forth in Schedule 3.3 but including any Operating Document of any Loan Party) or any material Contractual Obligation of any Loan Party and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any material Requirement of Law or any such material Contractual Obligation (other than the Liens created by the Collateral Documents). No Requirement of Law or Contractual Obligation applicable to the Borrower or any of its Subsidiaries could reasonably be expected to have a Material Adverse Effect. The absence of obtaining the Governmental Approvals described in Schedule 3.3 and the violations of Requirements of Law referenced in Schedule 3.3 shall not have an adverse effect on any rights of the Lenders or any Agent pursuant to the Loan Documents.

Section 3.4 Financial Condition.

(a) The audited consolidated balance sheets of the Borrower and its Subsidiaries as of December 31, 2011, December 31, 2012 and December 31, 2013, and the related consolidated statements of income and of cash flows for the fiscal years ended on such dates, reported on by and accompanied by an unqualified report from PricewaterhouseCoopers, present fairly in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as at such dates, and the consolidated results of its operations and its consolidated cash flows for the respective fiscal years then ended. All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein). No Loan Party has, as of the Closing Date, any material Guarantee obligations, material contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph or have been incurred after the date of such financial statements in the ordinary course of such Loan Party’s business that in the case of material contingent liabilities, have not been disclosed to the Administrative Agent. During the period from December 31, 2013 to and including the date hereof, there has been no disposition by any Loan Party of any material part of its business or property.

(b) Since December 31, 2013, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Section 3.5 Properties. Each Loan Party has title in fee simple to, or a valid leasehold interest in, all of its real property, and good title to, or a valid leasehold interest in, all of its other property, and none of such property is subject to any Lien except as permitted by Section 6.2. No Loan Party owns any Investment except as permitted by Section 6.7. As of the Closing Date, no Loan Party owns any Material Real Estate Assets.
Section 3.6 Litigation and Environmental Matters.

(a) No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened by or against any Loan Party or against any of their respective properties or revenues (a) with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby, or (b) that could reasonably be expected to have a Material Adverse Effect.

(b) Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(i) Except as disclosed on Schedule 3.6, to the knowledge of the Loan Parties, the facilities and properties owned, leased or operated by any Loan Party (the “Properties”) do not contain, and have not previously contained, any Materials of Environmental Concern in amounts or concentrations or under circumstances that constitute or have constituted a violation of, or could give rise to liability under, any Environmental Law;

(ii) no Loan Party has received or is aware of any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties or the business operated by any Loan Party (the “Business”), nor does the Borrower have knowledge or reason to believe that any such notice will be received or is being threatened;

(iii) no Loan Party has transported or disposed of Materials of Environmental Concern from the Properties in violation of, or in a manner or to a location that could give rise to liability under, any Environmental Law, nor has any Loan Party generated, treated, stored or disposed of Materials of Environmental Concern at, on or under any of the Properties in violation of, or in a manner that could give rise to liability under, any applicable Environmental Law;

(iv) no judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Borrower, threatened, under any Environmental Law to which any Loan Party is or will be named as a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business;

(v) there has been no release or threat of release of Materials of Environmental Concern at or from the Properties arising from or related to the operations of any Loan Party or otherwise in connection with the Business, in violation of or in amounts or in a manner that could reasonably be expected to give rise to liability under Environmental Laws;

(vi) the Properties and all operations of the Loan Parties at the Properties are in compliance, and have in the last five years been in compliance, with all applicable Environmental Laws, and except as disclosed on Schedule 3.6, to the knowledge of the Borrower, there is no contamination at, under or about the Properties or violation of any Environmental Law with respect to the Properties or the Business; and

(vii) no Loan Party has assumed any liability of any other Person under Environmental Laws.

Section 3.7 Compliance with Laws. Each Loan Party is in material compliance with all Requirements of Law except in such instances in which (i) such Requirement of Law is being contested in good faith by appropriate proceedings diligently conducted and the prosecution of such contest would not
reasonably be expected to result in a Material Adverse Effect, or (ii) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Section 3.8 Investment Company Status. No Loan Party is an “investment company,” or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended. Except as set forth in Schedule 3.3, no such Loan Party is subject to regulation under any Requirement of Law (other than Regulation X of the Board), including the Federal Power Act, that may limit its ability to incur Indebtedness or that may otherwise render all or any portion of the Obligations unenforceable.

Section 3.9 Taxes. Each Loan Party has filed or caused to be filed all Federal, all income and all other material state and other tax returns that are required to be filed and has paid all material taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other material taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with, and to the extent required by, GAAP have been provided on the books of the relevant Loan Party); no tax Lien has been filed, and, to the knowledge of the Borrower, no material claim is being asserted, with respect to any such tax, fee or other charge that is not being contested in good faith by appropriate proceedings.

Section 3.10 ERISA. Each Loan Party and each of its respective ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA with respect to each Pension Plan, and have performed all their obligations under each Pension Plan;

(a) no ERISA Event has occurred or is reasonably expected to occur;

(b) each Loan Party and each of its respective ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Pension Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained;

(c) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least 60%, and no Loan Party nor any of its respective ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below 60% as of the most recent valuation date;

(d) as of the most recent valuation date for any Pension Plan, the amount of outstanding benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), does not exceed $100,000;

(e) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which taxes could be imposed pursuant to Section 4975(c)(1)(A)-(D) of the Code;

(f) all liabilities under each Pension Plan are (i) funded to at least the minimum level required by law, (ii) provided for or recognized in the financial statements most recently delivered to the
Administrative Agent and the Lenders pursuant hereto or (iii) estimated in the formal notes to the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto; and:

(g)(i) no Loan Party is nor will any such Loan Party be a “plan” within the meaning of Section 4975(e) of the Code; (ii) the respective assets of the Loan Parties do not and will not constitute “plan assets” within the meaning of the United States Department of Labor Regulations set forth in 29 C.F.R. §2510.3-101; (iii) no Loan Party is nor will any such Loan Party be a “governmental plan” within the meaning of Section 3(32) of ERISA; and (iv) transactions by or with any Loan Party are not and will not be subject to state statutes applicable to such Loan Party regulating investments of fiduciaries with respect to governmental plans.

Section 3.11 Disclosure. No statement or information contained in this Agreement, any other Loan Document or any other document, certificate or statement furnished by or on behalf of any Loan Party to any Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not misleading in any material respect. The projections and pro forma financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. There is no fact known to any Responsible Officer that could reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents or in any other documents, certificates and statements furnished to any Agent and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

Section 3.12 Subsidiaries. Except as disclosed to the Administrative Agent by the Borrower in writing from time to time after the Closing Date, (a) Schedule 3.12 sets forth the name and jurisdiction of organization of the Borrower and each Subsidiary of the Borrower and, as to each such Subsidiary, the percentage of each class of Equity Interests owned by any Loan Party, and (b) there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors’ qualifying shares) of any nature relating to any Equity Interests of the Borrower or any Subsidiary, except as may be created by the Loan Documents.

Section 3.13 USA PATRIOT Act. Each Loan Party is in compliance with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Patriot Act or the Bribery Act 2012. No part of the proceeds of the Loans or Letters of Credit made hereunder will be used by any Loan Party or any of their Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

Section 3.14 Sanctioned Persons. No Loan Party nor any of its Subsidiaries is in violation of any of the country or list based economic and trade sanctions administered and enforced by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”). No Loan Party nor any of its Subsidiaries (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons.
Section 3.15 Margin Stock.

(a) None of the Borrower or any of the Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation T, U or X.

Section 3.16 Solvency. Each Loan Party is, and after giving effect to the incurrence of all Indebtedness, Obligations and obligations being incurred in connection herewith, will be and will continue to be, Solvent.

Section 3.17 Immaterial Subsidiaries. As of the Closing Date, no Restricted Subsidiaries are Immaterial Subsidiaries.

Section 3.18 Collateral Documents. The Security Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and the proceeds thereof. In the case of the Equity Interests, if any, described in the Security Agreement that are securities represented by stock certificates or otherwise constituting certificated securities within the meaning of Section 8-102(a)(15) of the UCC or the corresponding code or statute of any other applicable jurisdiction (“Certificated Securities”), when certificates representing such Equity Interests are delivered to the Collateral Agent, and in the case of the other Collateral constituting personal property described in the Security Agreement, when financing statements and other filings specified on Schedule 3.18(a) in appropriate form are filed in the offices specified on Schedule 3.18(a), the Collateral Agent, for the benefit of the Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to any other Person (except as otherwise contemplated by the Intercreditor Agreement and except for, in the case of Collateral other than Equity Interests, Liens permitted by Section 6.2 which are non-consensual permitted Liens, permitted purchase money Liens, or the interests of lessors under capital leases). As of the Closing Date, no Loan Party that is a limited liability company or partnership has any Equity Interests that are not Certificated Securities.

(b) Any Mortgages delivered after the Closing Date pursuant to Section 5.11 will be, upon execution, effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof, and when the Mortgages are filed in the offices for the applicable jurisdictions in which the Mortgaged Properties are located, each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person.
ARTICLE IV

CONDITIONS

Section 4.1 Closing Date. The obligations of the Lenders to make Loans hereunder and Issuing Bank to issue Letters of Credit, as applicable, shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 10.2):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement and each other Loan Document signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy or electronic transmission of a signed signature page of this Agreement and each other Loan Document) that such party has signed a counterpart of this Agreement and each other Loan Document.

(b) The Administrative Agent shall have received a Note executed by the Borrower in favor of each Lender requesting a Note in advance of the Closing Date.

(c) The Administrative Agent shall have received a fully executed copy of the Intercreditor Agreement.

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

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

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

(g) The Administrative Agent shall have received a certificate signed by a Responsible Officer of the Borrower, dated as of the Closing Date and in form and substance reasonably satisfactory to it, certifying (A) that the conditions specified in Sections 4.2(b) and (c) have been satisfied, and (B) that there has been no event or circumstance since December 31, 2013, that has had or that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(h) In order to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a valid, perfected first priority security interest in the Collateral (subject to Liens permitted by Section 6.2), each Loan Party shall have delivered to the Collateral Agent:

(i) evidence satisfactory to the Collateral Agent of the compliance by each Loan Party of its obligations under the Security Agreement and the other Collateral Documents (including its obligations to execute and deliver UCC financing statements, originals of securities, instruments and chattel paper, Mortgages with respect to the Material Real Estate Assets and any agreements governing deposit and/or securities accounts as provided therein);
(ii) a completed Perfection Certificate dated the Closing Date and executed by a Responsible Officer of each Loan Party, together with all attachments contemplated thereby; and

(iii) evidence that each Loan Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by the Collateral Agent.

(g) The Lenders shall have received satisfactory evidence that the Administrative Agent (on behalf of the Lenders) shall have a valid and perfected first priority (subject to Liens permitted by Section 6.2) lien and security interest in the Collateral.

(b) The Administrative Agent shall have received all governmental, shareholder and third party consents and approvals necessary in connection with (A) the entering into and arrangement of this Agreement, and (B) all related transactions and the related financings and other transactions contemplated hereby and expiration of all applicable waiting periods without any action being taken by any authority that could restrain, prevent or impose any material adverse conditions on the Borrower and its Subsidiaries or such other transactions or that could seek or threaten any of the foregoing, and no law or regulation shall be applicable which in the reasonable judgment of the Administrative Agent could have such effect.

(i) There shall not have occurred since December 31, 2013 any event or condition that has had or could be reasonably expected, either individually or in the aggregate, to have a Material Adverse Effect.

(j) The absence of any action, suit, investigation or proceeding pending or, to the knowledge of the Borrower, threatened in any court or before any arbitrator or governmental authority that could reasonably be expected to be determined adversely to any Loan Party which, if so determined, could reasonably be expected to have a Material Adverse Effect.

(k) The Lenders shall have received (i) audited consolidated financial statements of the Borrower for the fiscal years ended as of December 31, 2011, December 31, 2012 and December 31, 2013, and (ii) unaudited interim consolidated financial statements of the Borrower for the fiscal months ended March 31, 2014 and June 30, 2014 and each fiscal quarter ended thereafter that ends at least 15 days before the Closing Date.

(l) The Collateral Agent shall have received a certificate from the applicable Loan Party’s insurance broker or other evidence reasonably satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect, together with endorsements naming the Collateral Agent, for the benefit of the Secured Parties, as additional insured and loss payee thereunder to the extent required under Section 5.5.

(m) On the Closing Date, the Administrative Agent shall have received a Solvency Certificate in form, scope and substance reasonably satisfactory to the Administrative Agent, and demonstrating that Borrower is, individually and together with its Subsidiaries, are and will be Solvent.
(n) All accrued fees and expenses of the Agents and Lenders (including the fees and expenses of counsel (including any local counsel) for the Agents) shall have been paid.

(o) The Administrative Agent shall have received a fully executed copy of the ABL Credit Agreement certified by a Responsible Officer to be a true and complete copy of the ABL Credit Agreement.

(p)(i) All Indebtedness under the Subordinated Loan Agreement shall have been repaid in full, together with all fees and other amounts owing thereon and all commitments thereunder shall have been terminated and all liens securing the obligations under the Subordinated Loan Agreement shall have been terminated (or arrangements reasonably satisfactory to the Administrative Agent for such termination shall have been made) and (ii) the Borrower and its Restricted Subsidiaries shall have no Indebtedness for borrowed money outstanding as of the Closing Date other than the Obligations and Indebtedness under the ABL Credit Agreement.

(q) The Administrative Agent shall have received, to the extent reasonably requested by any of the Lenders at least five Business Days prior to the Closing Date, all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the USA Patriot Act.

The Administrative Agent shall notify the Borrower and the Lenders of the Closing Date, and such notice shall be conclusive and binding. Without limiting the generality of the provisions of Article IX, for purposes of determining compliance with the conditions specified in this Section, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.2 Each Credit Event. The obligation of each Lender to make a Loan or Issuing Bank to issue any Letter of Credit, as applicable, on the occasion of any Borrowing (other than a Borrowing consisting solely of a conversion of Loans of one Type to another Type or a continuation of a Eurodollar Loan following the expiration of the applicable Interest Period), or the obligation of Issuing Bank to extend the maturity or increase the face amount of any Letter of Credit on the date of any such extension or increase, and the effectiveness of any Commitment Increase pursuant to Section 2.19 or any extension of the Maturity Date pursuant to Section 2.20, is subject to the satisfaction of the following condition:

(a) The Administrative Agent shall have received a fully executed and delivered Borrowing Request or Issuance Notice and Application, as the case may be;

(b) The representations and warranties of the Borrower set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects (other than to the extent qualified by materiality or “Material Adverse Effect”, in which case, such representations and warranties shall be true and correct in all respects) on and as of the date of such Borrowing, Commitment Increase, increase or extension, as applicable, except that (i) for purposes of this Section, the representations and warranties contained in Section 3.4(a) shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 5.1 and (ii) to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date (other than to the extent qualified by materiality or “Material Adverse Effect”, in which case, such representations and warranties shall be true and correct in all respects);
(c) At the time of and immediately after giving effect to such Borrowing, Commitment Increase, increase or extension, as applicable, no Default or Event of Default shall have occurred and be continuing; and

(d) After giving effect to such Borrowing, Commitment Increase, increase or extension, as applicable, the Consolidated Total Leverage Ratio, calculated on a Pro Forma Basis as of the last day of the fiscal quarter most recently ended for which financial statements are required to be delivered pursuant to Section 5.1, shall not exceed the maximum Consolidated Total Leverage Ratio permitted under Section 6.12 for such period.

Each Borrowing, extension, increase, Commitment Increase and extension of the Maturity Date shall be deemed to constitute a representation and warranty by the Borrower that the conditions specified in paragraphs (b), (c) and (d) of this Section have been satisfied as of the date thereof.

ARTICLE V

AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit have been cancelled or expired or cash collateralized on terms reasonably satisfactory to Issuing Bank, each Loan Party covenants and agrees with the Lenders that:

Section 5.1 Financial Statements; Other Information. The Borrower will furnish to the Administrative Agent (for distribution to each Lender):

(a) as soon as available, but in any event within 120 days after the end of each fiscal year of the Borrower (or, if earlier, 15 days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC) following a Qualified IPO or other securities offering, a copy of the audited consolidated and consolidating balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such fiscal year and the related audited consolidated and consolidating statements of income and of cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous year, together with an unqualified opinion by PricewaterhouseCoopers or other independent certified public accountants of nationally recognized standing and reasonably acceptable to the Administrative Agent;

(b) as soon as available, but in any event not later than 30 days after the end of each fiscal year of the Borrower, the unaudited consolidated and consolidating balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such fiscal year and the related unaudited consolidated and consolidating statements of income and of cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer of the Borrower as being fairly stated in all material respects (subject to normal year-end audit adjustments);

(c) concurrently with the delivery of any financial statements pursuant to subsections (a) and (b), (i) a certificate of a Responsible Officer stating that, to the best of such Responsible Officer’s knowledge, each Loan Party during such period has observed or performed all of its covenants and other agreements, and satisfied every condition contained in this Agreement and the other Loan Documents to
which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and (ii) in the case of all monthly or annual financial statements, (x) a Compliance Certificate containing all information and calculations necessary for determining compliance by each Loan Party with the provisions of this Agreement referred to therein as of the last day of the month or fiscal year of the Borrower, as the case may be, and (y) to the extent not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of organization of any Loan Party and a list of any Intellectual Property issued to or acquired by any Loan Party since the date of the most recent report delivered pursuant to this clause (y) (or, in the case of the first such report so delivered, since the Closing Date);

(d) as soon as available, and in any event no later than 45 days after the end of each fiscal year of the Borrower, a detailed consolidated budget for such immediately subsequent fiscal year (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of each fiscal quarter of such fiscal year, the related consolidated statements of projected cash flow, projected changes in financial position and projected income and a description of the underlying assumptions applicable thereto, and projected covenant compliance for each fiscal quarter period of such fiscal year), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such fiscal year (collectively, the “Projections”), which Projections shall in each case be accompanied by a certificate of a Responsible Officer of the Borrower stating that such Projections are based upon good faith estimates and assumptions believed by the Borrower to be reasonable at the time made, it being recognized that Projections are not to be viewed as fact and that actual results during the period or periods covered by such Projections may differ from the projected results set forth therein by a material amount;

(e) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof (other than routine comment letters from the staff of the SEC relating to the Borrower’s filings with the SEC);

(f) within five days after the same are sent, copies of each annual report, proxy or financial statement or other material report that the Borrower sends to the holders of any class of the Borrower’s debt securities or public equity securities and, within five days after the same are filed, copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(g) upon request by the Administrative Agent, within five days after the same are sent or received, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law and that could reasonably be expected to have a Material Adverse Effect on any of the Governmental Approvals or otherwise on the operations of the Loan Parties;

(h) concurrently with the delivery of the financial statements referred to in subsections (a) and (b), copies of all written reports, presentations or memoranda with respect to results of operations or financial information of the Borrower or any Restricted Subsidiary that have been delivered to the Board of Directors of the Borrower for such month, excluding any material determined by the Borrower in good faith to be highly sensitive or confidential;
(i) concurrently with the delivery of the financial statements referred to in subsections (a), a report of a reputable insurance broker with respect to the insurance coverage required to be maintained pursuant to Section 5.5 and the terms of the Security Agreement, together with any supplemental reports with respect thereto which any Agent may reasonably request;

(j) promptly following any request in writing (including any electronic message) therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement or any other Loan Document, as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request; and

(k) the Borrower will furnish to the Collateral Agent (i) any information regarding Collateral required pursuant to the Collateral Documents and (ii) each year, at the time of delivery of annual financial statements with respect to the preceding fiscal year pursuant to Section 5.1(a), a certificate of its Responsible Officer (x) either confirming that there has been no change in the information contained in the schedules to the Security Agreement since the Closing Date or the date of the most recent certificate delivered pursuant to this Section and/or identifying such changes in the form of a Security Supplement delivered pursuant to Section 4.2 of the Security Agreement and (y) certifying that, to its knowledge, all Uniform Commercial Code financing statements (including fixtures filings, as applicable) and all supplemental intellectual property security agreements or other appropriate filings, recordings or registrations, have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified in the documents delivered pursuant to clause (x) above to the extent necessary to effect, protect and perfect the security interests under the Collateral Documents (except as noted therein with respect to any continuation statements to be filed within such period).

Information required to be delivered pursuant to Section 5.1(b) and Section 5.1(c) shall be required to be delivered for each fiscal quarter of the Borrower, not later than 45 days after the end of each such fiscal quarter, at any time (i) that quarterly financial statements are required to be delivered under any Material Indebtedness of the Borrower, (ii) after a Qualified IPO or (iii) after the ABL Credit Agreement has been repaid in full and terminated.

Information required to be delivered pursuant to Section 5.1(a) or Section 5.1(b) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such information, or provides a link thereto on the Borrower’s website on the Internet at http://www.fitbit.com (or any successor page) or at http://www.sec.gov; or (ii) on which such information is posted on the Borrower’s behalf on an Internet or intranet website, if any, to which the Lenders and the Administrative Agent have been granted access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that, (x) to the extent the Administrative Agent or any Lender so requests, the Borrower shall deliver paper copies of such documents to the Administrative Agent or such Lender until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (y) the Borrower shall notify the Administrative Agent (by facsimile or electronic mail) of the posting of any such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to herein, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Section 5.2 Notices of Material Events. The Borrower will furnish to the Administrative Agent (for distribution to each Lender) prompt written notice of the following:

(a) the occurrence of any Default;
(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Subsidiary thereof that would reasonably be expected to result in a Material Adverse Effect; and

c) any other development that becomes known to any officer of the Borrower or any of its Subsidiaries that results in, or would reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Responsible Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 5.3 Existence; Conduct of Business. The Borrower will, and will cause each of its Restricted Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; provided that (i) the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.3 and (ii) none of the Borrower or any of its Restricted Subsidiaries shall be required to preserve, renew or keep in full force and effect its rights, licenses, permits, privileges or franchises where failure to do so would not reasonably be expected to result in a Material Adverse Effect.

Section 5.4 Payment of Taxes. The Borrower will, and will cause each of its Restricted Subsidiaries to, pay all Tax liabilities, including all Taxes imposed upon it or upon its income or profits or upon any properties belonging to it that, if not paid, would reasonably be expected to result in a Material Adverse Effect, before the same shall become delinquent or in default, and all lawful claims other than Tax Liabilities which, if unpaid, would become a Lien upon any properties of the Borrower or any of its Restricted Subsidiaries not otherwise permitted under Section 6.2, in both cases except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings and (b) to the extent required by GAAP, the Borrower or such Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP.

Section 5.5 Maintenance of Properties; Insurance. The Borrower will, and will cause each of its Restricted Subsidiaries to, (a) keep and maintain all property used in the conduct of its business in good working order and condition, ordinary wear and tear and casualty events excepted, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect, and (b) maintain insurance with financially sound and reputable insurance companies in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. Except as otherwise agreed by the Collateral Agent, each such policy of insurance shall (a) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear and (b) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, reasonably satisfactory in form and substance to the Collateral Agent, that names the Collateral Agent, on behalf of the Secured Parties, as the loss payee thereunder and provide for at least thirty days’ prior written notice to the Collateral Agent of any cancellation of such policy.

Section 5.6 Books and Records; Inspection Rights. The Borrower will, and will cause each of its Restricted Subsidiaries to, keep proper books of record and account in which entries full, true and correct in all material respects are made and are sufficient to prepare financial statements in accordance with GAAP (other than as set forth in Schedule 3.4). The Borrower will, and will cause each of its Restricted Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender (pursuant to the request made through the Administrative Agent), upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss
its affairs, finances and condition with its officers and independent accountants (provided, that the Borrower or such Restricted Subsidiary shall be afforded the opportunity to participate in any discussions with such independent accountants), all at such reasonable times and as often as reasonably requested (but no more than once annually if no Event of Default exists). Notwithstanding anything to the contrary in this Section, none of the Borrower or any of its Restricted Subsidiaries shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives) is prohibited by applicable law or (iii) is subject to attorney, client or similar privilege or constitutes attorney work-product.

Section 5.7 ERISA-Related Information. The Borrower shall supply to the Administrative Agent (in sufficient copies for all the Lenders, if the Administrative Agent so requests):

(a) promptly and in any event within 15 days after the Borrower, any Restricted Subsidiary or any ERISA Affiliate files a Schedule B (or such other schedule as contains actuarial information) to IRS Form 5500 in respect of a Plan with Unfunded Pension Liabilities, a copy of such IRS Form 5500 (including the Schedule B);

(b) promptly and in any event within 30 days after the Borrower, any Restricted Subsidiary or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred, a certificate of the chief financial officer of the Borrower describing such ERISA Event and the action, if any, proposed to be taken with respect to such ERISA Event and a copy of any notice filed with the PBGC or the IRS pertaining to such ERISA Event and any notices received by such Borrower, Restricted Subsidiary, or ERISA Affiliate from the PBGC or any other governmental agency with respect thereto; provided that, in the case of ERISA Events under paragraph (d) of the definition thereof, the 30-day period set forth above shall be a 10-day period, and, in the case of ERISA Events under paragraph (b) of the definition thereof, in no event shall notice be given later than the occurrence of the ERISA Event;

(c) promptly, and in any event within 30 days, after becoming aware that there has been (i) a material increase in Unfunded Pension Liabilities (taking into account only Pension Plans with positive Unfunded Pension Liabilities) since the date the representations hereunder are given or deemed given, or from any prior notice, as applicable; (ii) the existence of potential withdrawal liability under Section 4201 of ERISA, if the Borrower, any Restricted Subsidiary and the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans, (iii) the adoption of, or the commencement of contributions to, any Plan subject to Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA by the Borrower, any Restricted Subsidiary or any ERISA Affiliate, or (iv) the adoption of any amendment to a Plan subject to Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA which results in a material increase in contribution obligations of the Borrower, any Restricted Subsidiary or any ERISA Affiliate, a detailed written description thereof from the chief financial officer of the Borrower; and

(d) if, at any time after Closing Date, the Borrower, any Restricted Subsidiary or any ERISA Affiliate maintains, or contributes to (or incurs an obligation to contribute to), a Pension Plan or Multiemployer Plan which is not set forth in Schedule 3.10, then the Borrower shall deliver to the Administrative Agent an updated Schedule 3.10 as soon as practicable, and in any event within 10 days after the Borrower, such Restricted Subsidiary or such ERISA Affiliate maintains, or contributes to (or incurs an obligation to contribute to), thereto.

Section 5.8 Compliance with Laws and Agreements. The Borrower will, and will cause each of its Restricted Subsidiaries to, comply with all laws, rules, regulations and orders of any
Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 5.9 Use of Proceeds. The proceeds of the Loans will be used only for ongoing working capital and general corporate purposes, including, without limitation, for stock repurchases under stock repurchase programs approved by the Borrower and for Acquisitions. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

Section 5.10 Additional Guarantors. In the event that any Person becomes a Subsidiary (other than an Excluded Subsidiary), the Borrower shall within 30 days thereafter (or such longer period of time as the Collateral Agent may agree in its sole discretion) (i) cause such Subsidiary to become a Guarantor hereunder by executing and delivering to the Administrative Agent a Counterpart Agreement and a Grantor under the Security Agreement by executing and delivering to the Collateral Agent the joinder agreement required thereunder, and (ii) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates reasonably requested by the Collateral Agent or required by the Collateral Documents. In the event that any Person becomes a Foreign Subsidiary of the Borrower (other than an Unrestricted Subsidiary), and the ownership interests of such Foreign Subsidiary are owned by any Loan Party, such Loan Party shall within 30 days thereafter (or such longer period of time as the Collateral Agent may agree in its sole discretion) take all of the actions referred to in the Security Agreement necessary to grant a perfected security interest in favor of the Collateral Agent, for the benefit of the Secured Parties, under the Security Agreement in the Equity Interests of such Foreign Subsidiary (provided, that in no event shall more than 65% of the total outstanding Equity Interests of any such Foreign Subsidiary that is an Excluded Subsidiary be required to be so pledged). With respect to each such Subsidiary (other than an Excluded Subsidiary) and Foreign Subsidiary, the Borrower shall promptly send to the Administrative Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary, and (ii) all of the data required to be set forth in Schedule 3.12 hereof; and such written notice shall be deemed to supplement Schedule 3.12 for all purposes hereof. If requested by the Administrative Agent, the Administrative Agent shall receive an opinion of counsel for the Borrower in form and substance reasonably satisfactory to the Administrative Agent in respect of such customary matters as may be reasonably requested by the Administrative Agent relating to any Counterpart Agreement or joinder agreement delivered pursuant to this Section, dated as of the date of such agreement.

Section 5.11 Additional Material Real Estate Assets. In the event that any Loan Party acquires a Material Real Estate Asset or a Real Estate Asset owned or leased on the Closing Date becomes a Material Real Estate Asset due to a material renovation of or addition to such Real Estate Assets and such interest has not otherwise been made subject to the Lien of the Collateral Documents in favor of the Collateral Agent, for the benefit of the Secured Parties, then such Loan Party shall promptly provide notice to the Administrative Agent of such acquisition or event and, to the extent requested by the Administrative Agent or the Required Lenders, shall promptly (i) execute and deliver a first priority Mortgage, in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, covering such real property, (ii) if requested by the Administrative Agent, provide the Lenders with (x) title and extended coverage insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably specified by the Administrative Agent) as well as a current ALTA survey thereof, together with a surveyor’s certificate, and (y) any consents or estoppels reasonably deemed necessary or advisable by the Administrative Agent in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent, and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from

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counsel, reasonably satisfactory to the Administrative Agent. In connection with the foregoing, no later than three (3) Business Days prior to the date on which a Mortgage is executed and delivered pursuant to this Section 5.11, in order to comply with the Flood Laws, the Administrative Agent shall have received the following documents: (A) a completed standard “life of loan” flood hazard determination form, (B) if the improvement(s) to the applicable improved real property is located in a special flood hazard area, a notification to the applicable Loan Party (“Loan Party Notice”) and (if applicable) notification to the applicable Loan Party that flood insurance coverage under the National Flood Insurance Program (“NFIP”) is not available because the community does not participate in the NFIP, (C) documentation evidencing the applicable Loan Party’s receipt of the Loan Party Notice (e.g., countersigned Loan Party Notice, return receipt of certified U.S. Mail, or overnight delivery), and (D) if the Loan Party Notice is required to be given and, to the extent flood insurance is required by any applicable Requirement of Law or any Lenders’ written regulatory or compliance procedures and flood insurance is available in the community in which the property is located, a copy of one of the following: the flood insurance policy, the applicable Loan Party’s application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance reasonably satisfactory to the Administrative Agent.

Section 5.12 Further Assurances. Each Loan Party shall take such actions as the Administrative Agent or the Collateral Agent may reasonably request from time to time to ensure that the Obligations are (i) guaranteed by the Guarantors and (ii) are secured by the Collateral. If at any time the Collateral Agent receives a notice from a Lender or otherwise becomes aware that any mortgaged Material Real Estate Asset has become a Flood Hazard Property, the Collateral Agent shall deliver such notice to the Borrower and the Borrower shall take all actions required as a result of such change as described in Section 5.11.

Section 5.13 Environmental Laws. Except where the same would not reasonably be expected to have a Material Adverse Effect, the Borrower will, and will cause each of its Restricted Subsidiaries to:

(a) Comply in all material respects with, and use reasonable commercial efforts to bring about compliance in all respects by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain and comply in all respects with and maintain, and use reasonable commercial efforts to bring about that all tenants and subtenants obtain and comply in all respects with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws.

Section 5.14 Designation of Restricted and Unrestricted Subsidiaries.

(a) At any time after repayment in full, and termination of all commitments under, the ABL Credit Agreement, the Board of Directors may designate any Subsidiary, including a newly acquired or created Subsidiary, to be an Unrestricted Subsidiary if it meets the following qualifications:

(i) such Subsidiary does not own any Equity Interest of the Borrower or any Restricted Subsidiary;
(ii) the Borrower would be permitted to make an Investment at the time of the designation in an amount equal to the aggregate fair market value of all Investments of the Borrower or its Restricted Subsidiaries in such Subsidiary;

(iii) any Guarantee or other credit support thereof by the Borrower or any Restricted Subsidiary is permitted under Section 6.1 or Section 6.7;

(iv) neither the Borrower nor any Restricted Subsidiary has any obligation to subscribe for additional Equity Interests of such Subsidiary or to maintain or preserve its financial condition or cause it to achieve specified levels of operating results except to the extent permitted by Section 6.1 or Section 6.7;

(v) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing or would result from such designation;

(vi) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a “restricted subsidiary” or a “guarantor” (or any similar designation) for any other Indebtedness of the Borrower or a Restricted Subsidiary; and

(vii) immediately after such designation on a Pro Forma Basis, the Consolidated Total Leverage Ratio, as of the last day of the fiscal quarter most recently ended for which financial statements are required to be delivered pursuant to Section 5.1, shall not exceed the maximum Consolidated Total Leverage Ratio permitted under Section 6.12 for such period.

Once so designated, the Subsidiary will remain an Unrestricted Subsidiary, subject to subsection (b).

(b) A Subsidiary previously designated as an Unrestricted Subsidiary which fails to meet the qualifications set forth in subsections (a)(i), (a)(iii), (a)(iv) or (a)(vi) of this Section 5.14 will be deemed to become at that time a Restricted Subsidiary, subject to the consequences set forth in subsection (d). The Board of Directors may designate an Unrestricted Subsidiary to be a Restricted Subsidiary if the designation would not cause an Event of Default.

(c) Upon a Restricted Subsidiary becoming an Unrestricted Subsidiary,

(i) all existing Investments of the Borrower and the Restricted Subsidiaries therein (valued at the Borrower’s proportional share of the fair market value of its assets less liabilities) will be deemed made at that time;

(ii) all existing Equity Interest or Indebtedness of the Borrower or a Restricted Subsidiary held by it will be deemed incurred at that time, and all Liens on property of the Borrower or a Restricted Subsidiary held by it will be deemed incurred at that time;

(iii) all existing transactions between it and the Borrower or any Restricted Subsidiary will be deemed entered into at that time;

(iv) it is released at that time from the Guaranty and the Security Agreement and all related security interests on its property shall be released; and

(v) it will cease to be subject to the provisions of this Agreement as a Restricted Subsidiary.

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(d) Upon an Unrestricted Subsidiary becoming, or being deemed to become, a Restricted Subsidiary pursuant to Section 5.14(b),

(i) all of its Indebtedness will be deemed incurred at that time for purposes of Section 6.1;

(ii) Investments therein previously charged under Section 6.7 will be credited thereunder;

(iii) it may be required to become a Guarantor pursuant to Section 5.10; and

(iv) it will thenceforward be subject to the provisions of this Agreement as a Restricted Subsidiary.

(e) Any designation by the Board of Directors of a Subsidiary as an Unrestricted Subsidiary after the Closing Date will be evidenced to the Administrative Agent by promptly filing with the Administrative Agent a copy of the resolutions of the Board of Directors giving effect to the designation and a certificate of an officer of the Borrower certifying that the designation complied with the foregoing provisions.

Section 5.15 Post-Closing Covenant.

Within 45 days after the Closing Date (or such other date as the Collateral Agents shall agree in its sole discretion), the Borrower shall cause to be delivered to the Collateral Agent (a) certificates (together with appropriate instruments of transfer, executed in blank), if any, representing up to 66% of the total outstanding voting Equity Interests (and 100% of the non-voting Equity Interests) of each of the Subsidiaries set forth on Schedule 5.15, in each case that is required to be pledged to the Collateral Agent pursuant to Loan Documents and (b) lender's loss payable, additional insured and notice of cancellation endorsements, as applicable, with respect to each Loan Party’s liability and property insurance policies, in each case, in form and substance reasonably satisfactory to the Collateral Agent.

ARTICLE VI
NEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have been cancelled or expired or cash collateralized on terms reasonably satisfactory to Issuing Bank, each Loan Party covenants and agrees with the Lenders that:

Section 6.1 Indebtedness. No Loan Party shall, nor shall it permit any of its Restricted Subsidiaries to, create, incur or assume, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a)(i) the Obligations and (ii) the “Obligations” under and as defined in the ABL Credit Agreement; provided, that the aggregate amount of such Indebtedness under this clause (ii) does not exceed $287,500,000;

(b) Indebtedness of the Borrower or its Restricted Subsidiaries with respect to Capital Lease Obligations, sale-lease back transactions and purchase money Indebtedness in an aggregate
principal amount not to exceed $50,000,000 at any time; provided that any such Indebtedness shall be secured only by the asset (including all accessions, attachments, improvements and the proceeds thereof) acquired in connection with the incurrence of such Indebtedness;

(c) Unsecured Indebtedness in an aggregate outstanding principal amount not to exceed at any time $100,000,000;

(d) Indebtedness of any Restricted Subsidiary to the Borrower or to any other Restricted Subsidiary, or of the Borrower to any Restricted Subsidiary; provided that (i) all such Indebtedness owing by a Loan Party to any Restricted Subsidiary that is not a Guarantor shall be unsecured and subordinated in right of payment to the payment in full of the Obligations and (ii) any such Indebtedness of any Restricted Subsidiary that is not a Guarantor owing to any Loan Party shall be subject to the limitations set forth in Section 6.7(d);

(e) Indebtedness which may be deemed to exist pursuant to any Guarantees, performance, statutory or similar obligations (including in connection with workers’ compensation) or obligations in respect of letters of credit, surety bonds, bank guarantees or similar instruments related thereto incurred in the ordinary course of business, or pursuant to any appeal obligation, appeal bond or letter of credit in respect of judgments that do not constitute an Event of Default under Section 8.1(k);

(f) Indebtedness in connection with cash management agreements, netting services, overdraft protections and otherwise in connection with deposit accounts;

(g) Guarantees by the Borrower of Indebtedness of a Restricted Subsidiary or Guarantees by a Restricted Subsidiary of Indebtedness of the Borrower or another Restricted Subsidiary with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.1; provided that (i) if the Indebtedness that is being guarantied is unsecured and/or subordinated to the Obligations, the Guarantor shall also be unsecured and/or subordinated to the Obligations and (ii) in the case of Guarantees by a Loan Party of the obligations of a Restricted Subsidiary that is not a Guarantor, such Guarantees shall be permitted by Section 6.7;

(h) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Restricted Subsidiary, or to hedge currency exposure or to hedge energy costs or exposure, which, in any case, are not entered into for speculative purposes;

(i) other Indebtedness not otherwise permitted hereunder so long as (i) after giving effect to the incurrence of such Indebtedness, the Borrower’s Consolidated Total Leverage Ratio, calculated on a Pro Forma Basis as of the last day of the fiscal quarter most recently ended for which financial statements are required to be delivered pursuant to Section 5.1, does not exceed 3.00 to 1.00 and (ii) no Default or Event of Default has occurred and is continuing or would result therefrom; and

(j) Indebtedness in an aggregate outstanding amount not to exceed at any time $100,000,000 consisting of purchase price adjustments, earn-outs, deferred compensation, or other arrangements representing acquisition consideration or deferred payments of a similar nature incurred in connection with any Permitted Acquisition (and, in the case of deferred compensation representing, or in substance representing, consideration or a portion of the purchase price in connection with such Permitted Acquisition) or other Investment permitted by Section 6.7 (collectively, “Deferred Payment Obligations”), the amount of which shall be deemed to be the amount required to be accrued as a liability in accordance with GAAP.
Notwithstanding the foregoing exceptions, no Loan Party shall permit FitBit International Holdings or any of its Subsidiaries or parent entities that are not Loan Parties to, create, incur or assume, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness permitted under this Section 6.1 (other than Indebtedness permitted under Section 6.1(d) that is owed to a Loan Party or to a Subsidiary of FitBit International Holdings) in excess of $18,000,000 at any time outstanding.

Section 6.2 Liens. The Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it except:

(a) Permitted Encumbrances;

(b) any Lien on any property or asset of the Borrower or any Restricted Subsidiary existing on the date hereof and set forth in Schedule 6.2 and any modifications, renewals and extensions thereof and any Lien granted as a replacement or substitute thereof; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Restricted Subsidiary other than improvements thereon or proceeds thereof and (ii) such Lien shall secure only those obligations which it secures on the date hereof and any refinancing, extension, renewal or replacement thereof that does not increase the outstanding principal amount thereof;

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Restricted Subsidiary or existing on any property or asset of any Person that becomes a Restricted Subsidiary after the date hereof and (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Restricted Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Restricted Subsidiary other than improvements thereon or proceeds thereof and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Restricted Subsidiary, as the case may be, and any refinancing, extension, renewal or replacement thereof that does not increase the outstanding principal amount thereof;

(d) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Restricted Subsidiary; provided that (i) such security interests secure Indebtedness that is permitted by Section 6.1(b) or Section 6.1(i), (ii) such security interests and the Indebtedness secured thereby are initially incurred prior to or within 180 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Borrower or any Restricted Subsidiary other than improvements thereon or proceeds thereof;

(e) licenses, sublicenses, leases or subleases granted to others in the ordinary course of business not interfering in any material respect with the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(f) the interest and title of a lessor under any lease, license, sublease or sublicense (other than a license of sublicense of Intellectual Property) entered into by the Borrower or any Restricted Subsidiary in the ordinary course of its business and other statutory and common law landlords’ Liens under leases;

(g)(A) non-exclusive licenses of Intellectual Property granted to third parties by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business or pursuant to the Platform Contribution License Agreement, and (B) licenses of Intellectual Property that could not result
in a legal transfer of title of the licensed property that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discrete geographical areas outside of the United States; provided that any such license pursuant to this clause (e), (x) permits the use by (or license to) the Administrative Agent of the Intellectual Property covered thereby to permit the Administrative Agent, on a royalty free basis, to possess, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, convey, transfer or grant options to purchase, any Collateral, and (y) does not interfere in any material respect with the ordinary conduct of business of the Borrower and its Restricted Subsidiaries;

(h) in connection with the sale or transfer of any assets in a transaction not prohibited hereunder, customary rights and restrictions contained in agreements relating to such sale or transfer pending the completion thereof;

(i) in the case of any joint venture, any put and call arrangements related to its Equity Interests set forth in its organizational documents or any related joint venture or similar agreement;

(j) Liens securing Indebtedness to finance insurance premiums owing in the ordinary course of business to the extent such financing is not prohibited hereunder;

(k) Liens on earnest money deposits of cash or Cash Equivalents made in connection with any Acquisition not prohibited hereunder;

(l) bankers’ Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower or any Restricted Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank or banks with respect to cash management and operating account arrangements;

(m) Liens in the nature of the right of setoff in favor of counterparties to contractual agreements not otherwise prohibited hereunder with the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(n)(i) Liens securing the Obligations pursuant to any Loan Document and (ii) Liens created pursuant to the ABL Documents; provided, that in the case of this clause (ii) such Liens are subject to the Intercreditor Agreement; and

(o) other Liens securing obligations in an aggregate amount not to exceed $50,000,000 at any time outstanding.

Notwithstanding the foregoing exceptions, no Loan Party shall permit FitBit International or any of its Subsidiaries or parent entities that are not Loan Parties to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it securing Indebtedness or other obligations in excess of $18,000,000 in the aggregate.

Section 6.3 Fundamental Changes; Assets Sales; Changes in Business.

(a) The Borrower will not, and will not permit any Restricted Subsidiary to, (x) merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, (y) sell, transfer, license, lease, enter into any sale-leaseback transactions with respect to, or otherwise dispose of (in one transaction or in a series of transactions) (A) all or substantially all of the assets of the Borrower and its Restricted Subsidiaries, taken as a whole, (B) all or substantially all of the stock of any of its Restricted Subsidiaries (in each case, whether now owned or hereafter acquired) or (C)
any Intellectual Property, or (z) liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default or Event of Default shall have occurred and be continuing:

(i) any Subsidiary or any other Person may merge into or consolidate with the Borrower in a transaction in which the surviving entity is (x) the Borrower or (y) a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, which corporation shall expressly assume, by a written instrument in form and substance reasonably satisfactory to the Administrative Agent, all the obligations of the Borrower under the Loan Documents;

(ii) any Person (other than the Borrower) may merge into or consolidate with any Restricted Subsidiary in a transaction in which the surviving entity is a Restricted Subsidiary ( provided that any such merger or consolidation involving a Guarantor must result in a Guarantor as the surviving entity);

(iii) any Loan Party may sell, transfer, license lease or otherwise dispose of its assets to any other Loan Party;

(iv) in connection with any Acquisition, any Restricted Subsidiary may merge into or with, or consolidate with any other Person, and any other Person may merge into such Restricted Subsidiary, so long as the Person surviving such merger or consolidation shall be a Restricted Subsidiary ( provided that any such merger or consolidation involving a Guarantor must result in a Guarantor as the surviving entity);

(v) any Restricted Subsidiary may merge into or consolidate with any other Person in a transaction in which such Restricted Subsidiary ceases to be a direct or indirect Subsidiary of the Borrower if such transaction is excluded from the definition of “Asset Sale” by either clause (i) or (j) thereof;

(vi) any Restricted Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; and

(vii) the Borrower and any Restricted Subsidiary may license its Intellectual Property to the extent permitted by Section 6.2(g).

(b) The Borrower will not, and will not permit any of its Restricted Subsidiaries to, sell, lease (as lessor or sublessor), enter into a sale and leaseback arrangement, exclusively license (as licensor or sublicensee), exchange transfer or otherwise dispose of, in one transaction or a series of transactions, all or any party of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including the Equity Interests of any of the Borrower’s Subsidiaries, except sales and other dispositions of assets that do not constitute Asset Sales.

(c) The Borrower will not, and will not permit any of its Restricted Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Restricted Subsidiaries on the date of execution of this Agreement and businesses reasonably related or complementary thereto.

Section 6.4 Restricted Payments. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, declare or make, directly or indirectly, any Restricted Payment except:

(a) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Restricted Payments in an aggregate amount not to exceed the Available Amount determined at such time;
(b) any Restricted Subsidiary of the Borrower may declare and pay dividends or make other distributions ratably to (i) its equity holders, (ii) the Borrower or (iii) the Guarantors;

c) the Borrower may make Restricted Payments to redeem in whole or in part any of its Equity Interest for another class of its Qualified Equity Interest or rights to acquire its Qualified Equity Interest or with proceeds from substantially concurrent equity contributions or issuances of new Qualified Equity Interest; provided that the only consideration paid for any such redemption is Qualified Equity Interest of the Borrower or the proceeds of any substantially concurrent equity contribution or issuance of Qualified Equity Interest;

d) after a Qualified IPO, the Borrower may make restricted Payments in an aggregate amount per annum not exceeding 10% of the net cash proceeds received by the Borrower from such Qualified IPO;

e) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower may purchase, redeem or otherwise acquire its Equity Interest for aggregate consideration not in excess of $10,000,000 in any fiscal year; and

(f) other Restricted Payments in an aggregate amount not to exceed $15,000,000.

Section 6.5 Restrictive Agreements. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Restricted Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets to secure the Obligations, or (b) the ability of any Restricted Subsidiary to pay dividends or other distributions with respect to any shares of its Equity Interests or to make or repay loans or advances to the Borrower or any other Restricted Subsidiary or of any Restricted Subsidiary to Guarantee Indebtedness of the Borrower or any other Restricted Subsidiary under the Loan Documents; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement or any other Loan Document, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.5 (and shall apply to any extension or renewal of, or any amendment or modification materially expanding the scope of, any such restrictions or conditions taken as a whole), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Restricted Subsidiary or assets of the Borrower or any Restricted Subsidiary pending such sale, provided such restrictions and conditions apply only to the Restricted Subsidiary or assets to be sold and such sale is not prohibited hereunder, (iv) the foregoing shall not apply to any agreement or restriction or condition in effect at the time any Person becomes a Restricted Subsidiary, so long as such agreement was not entered into solely in contemplation of such Person becoming a Restricted Subsidiary, (v) the foregoing shall not apply to customary provisions in joint venture agreements and other similar agreements applicable to joint ventures, (vi) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (vii) clause (a) of the foregoing shall not apply to customary provisions in leases, licenses, sub-leases, and sub-leases and other contracts restricting the assignment thereof or restricting the grant of Liens in such lease, license, or sub-lease, sub-license or other contract, (viii) the foregoing shall not apply to restrictions or conditions set forth in any agreement governing Indebtedness of any Subsidiary that is not, and is not required to become, a Guarantor; provided that such restrictions and conditions are customary for such
Indebtedness and are no more restrictive, taken as a whole, than the comparable restrictions and conditions set forth in this Agreement as determined in the good faith judgment of the Board of Directors, and (ix) the foregoing shall not apply to restrictions on cash or other deposits (including escrowed funds) imposed under contracts entered into in the ordinary course of business.

Section 6.6 Transactions with Affiliates. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates (other than between or among the Loan Parties or among Restricted Subsidiaries that are not Loan Parties and not involving any other Affiliate except as otherwise permitted hereunder), except (a) on terms and conditions not less favorable to the Borrower or such Restricted Subsidiary than could be obtained on an arm’s-length basis from unrelated third parties as determined in good faith by the independent directors of the Board of Directors, (b) payment of customary directors’ fees, customary out-of-pocket expense reimbursement, indemnities (including the provision of directors and officers insurance) and compensation arrangements for members of the board of directors, officers or other employees of the Borrower or any of its Restricted Subsidiaries and (c) any Restricted Payment permitted by Section 6.4.

Section 6.7 Investments. No Loan Party shall, nor shall it permit any of its Restricted Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, except:

(a) Investments in cash and Cash Equivalents;

(b) Investments owned as of the Closing Date in any Restricted Subsidiary and Investments made after the Closing Date in the Borrower and any wholly owned Restricted Subsidiary of the Borrower which is a Guarantor;

(c) Investments in Unrestricted Subsidiaries and Joint Ventures; provided that such Investments (including through intercompany loans) shall not exceed at any time an aggregate amount of $75,000,000;

(d) intercompany loans to the extent permitted under Section 6.1(d) and other Investments in Restricted Subsidiaries which are not Guarantors; provided that such Investments (including through intercompany loans and any Acquisition) in Restricted Subsidiaries that are not Guarantors when combined with all Investments made pursuant to Section 6.7(p) shall not exceed at any time an aggregate amount equal to the greater of (i) $100,000,000 and (ii) 15% of Consolidated Total Assets;

(e) Permitted Acquisitions;

(f) loans and advances to employees of the Borrower and its Restricted Subsidiaries made in the ordinary course of business in an aggregate principal amount not to exceed $2,000,000;

(g) Investments described in Schedule 6.7;

(h) to the extent constituting Investments, Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Restricted Subsidiary, or to hedge currency exposure or to hedge energy costs or exposure, which, in any case, are not entered into for speculative purposes;
(i) trade receivables in the ordinary course of business;

(j) guarantees to insurers required in connection with worker’s compensation and other insurance coverage arranged in the ordinary course of business;

(k) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in good faith settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(l) intercompany Investments by any Foreign Subsidiary in any other Foreign Subsidiary;

(m) lease, utility and other similar deposits in the ordinary course of business;

(n) Investments of any Person in existence at the time such Person becomes a Restricted Subsidiary; provided such Investment was not made in connection with or anticipation of such Person becoming a Restricted Subsidiary and any modification, replacement, renewal or extension thereof;

(o) Investments in the form of non-cash consideration received in connection with dispositions of Intellectual Property (as defined in the Security Agreement) pursuant to clause (i) of the definition of “Asset Sale”; and

(p) other Investments not otherwise permitted hereunder in an aggregate amount, when combined with all Investments made pursuant to Section 6.7(d), not to exceed at any time the greater of $100,000,000 and 15% of the Borrower’s and its Subsidiaries’ Consolidated Total Assets as of the last day of the period for which financial statements have been delivered pursuant to Section 5.1(a) or (b).

For purposes of covenant compliance with this Section 6.7, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, less any amount paid, repaid, returned, distributed or otherwise received in cash in respect of such Investment.

Notwithstanding anything herein to the contrary, no Loan Party shall, nor shall it permit any of its Restricted Subsidiaries to, allow or cause any Domestic Subsidiary to be a subsidiary of a Foreign Subsidiary (other than any Domestic Subsidiary that is an existing subsidiary of an acquired Foreign Subsidiary at the time of the Acquisition).

For purposes of covenant compliance with this Section 6.7, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, less any amount paid, repaid, returned, distributed or otherwise received in cash in respect of such Investment.

Section 6.8 Use of Proceeds. The Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, use any part of the proceeds of any Loan or Letter of Credit for (i) any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X or (ii) funding operations in, financing investments or activities in, or making any payments to, a Sanctioned Person or a Sanctioned Entity. The proceeds of the Loans and Letters of Credit will be used only for ongoing working capital and general corporate purposes, including, without limitation, for Acquisitions.

Section 6.9 Accounting Changes. The Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, make any change in its (a) fiscal year or (b) accounting policies or reporting practices, except as required by GAAP.
Section 6.10 Amendments to Operating Documents. No Loan Party shall nor shall it permit any of its Restricted Subsidiaries to, agree to any material amendment, restatement, supplement or other modification to, or waiver of, any of its Operating Documents to the extent such amendment, restatement, supplement or other modification would reasonably be expected to be materially adverse to the interests of the Lenders without in each case obtaining the prior written consent of Requisite Lenders to such materially adverse amendment, restatement, supplement or other modification or waiver.

Section 6.11 Payments of Certain Indebtedness; Modification of Certain Agreements.

(a) The Loan Parties shall not and shall not permit any Restricted Subsidiary to make any optional or mandatory payment, prepayment, repurchase or redemption of, or otherwise defease the principal of or interest on, or any other amount owing in respect of any Deferred Payment Obligations or Indebtedness outstanding under any unsecured, senior subordinated or subordinated Indebtedness of any Loan Party (including Guarantees thereof by any Loan Party), except that (i) regularly scheduled interest payments in respect of such unsecured, senior subordinated or subordinated Indebtedness of the Borrower or any Subsidiary Guarantor may be made in accordance with and to the extent permitted by the subordination provisions applicable thereto, (ii) the Indebtedness outstanding under any unsecured, senior subordinated or subordinated Indebtedness of the Borrower or any Subsidiary Guarantor may be prepaid in an amount not exceeding the Available Amount, in each case so long as no Default or Event of Default is continuing or would result therefrom and (iii) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the Loan Parties and their Restricted Subsidiaries may make payments in respect of Deferred Payment Obligations that do not constitute subordinated Indebtedness; or

(b) The Loan Parties shall not and shall not permit any Restricted Subsidiary to amend, modify or otherwise change, or consent or agree to any amendment, modification, waiver or other change to (i) any of the ABL Documents other than to the extent permitted by the terms of the Intercreditor Agreement or (ii) any agreement or instrument governing or evidencing any unsecured, senior subordinated or subordinated Indebtedness of Loan Party (including Guarantees thereof by any Loan Party) in any manner that is materially adverse to the Lenders (determined by comparison to such terms in effect on the date of creation thereof), without the prior consent of the Administrative Agent (with approval of the Required Lenders).

(c) The Loan Parties (i) shall not permit Fitbit IPCo to transfer or assign any of its rights under the Platform Contribution License Agreement to any Person other than Fitbit International Holdings, any of its wholly-owned Subsidiaries or any Loan Party and (ii) shall not permit any other Person (other than FitBit International Holdings, any of its wholly-owned Subsidiaries or any Loan Party) to succeed to the rights of FitBit IPCo under the Platform Contribution License Agreement by way of merger, consolidation, liquidation, contribution or otherwise.

Section 6.12 Financial Condition Covenant. The Borrower shall not permit the Consolidated Total Leverage Ratio as of the last day of any fiscal quarter to exceed the ratio set forth opposite such date in the table below (the “Financial Performance Covenant”):

<table>
<thead>
<tr>
<th>Fiscal Quarter Ending</th>
<th>Consolidated Total Leverage Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 30, 2014</td>
<td>3.00:1.00</td>
</tr>
<tr>
<td>September 30, 2014</td>
<td>3.00:1.00</td>
</tr>
<tr>
<td>December 31, 2014</td>
<td>3.00:1.00</td>
</tr>
<tr>
<td>March 31, 2015</td>
<td>2.75:1.00</td>
</tr>
<tr>
<td>June 30, 2015</td>
<td>2.75:1.00</td>
</tr>
<tr>
<td>September 30, 2015</td>
<td>2.75:1.00</td>
</tr>
</tbody>
</table>
Section 6.13 Anti-Terrorism Law; OFAC; Anti-Corruption.

The Loan Parties shall not and shall not permit any Restricted Subsidiary to:

(a) Conduct, deal in or engage in or permit any of their Affiliates or agents within its control to conduct, deal in or engage in any of the following activities: (a) conduct any business or engage in any transaction or dealing with any person blocked pursuant to Executive Order No. 13224 ("Blocked Person"), including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person; (b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or the Patriot Act;

(b) Use the proceeds of any Loan or Letter of Credit made hereunder to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity or in any other manner that will result in any violation or breach by any Person of OFAC; or

(c) Use any part of the proceeds of any Loan or Letter of Credit, directly or indirectly, for any payment to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

ARTICLE VII

GUARANTY

Section 7.1 Guaranty of the Obligations. Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to the Administrative Agent for the ratable benefit of the Beneficiaries the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the "Guaranteed Obligations").

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<table>
<thead>
<tr>
<th>Fiscal Quarter Ending</th>
<th>Consolidated Total Leverage Ratio</th>
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<tr>
<td>March 31, 2016</td>
<td>2.50:1.00</td>
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<tr>
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<tr>
<td>June 30, 2018</td>
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Section 7.2 Payment by Guarantors. Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of the Borrower to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in cash, to the Administrative Agent for the ratable benefit of the Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for the Borrower’s becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Borrower for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to the Beneficiaries as aforesaid.

Section 7.3 Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability and this Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) the Administrative Agent may enforce this Guaranty during the continuation of an Event of Default notwithstanding the existence of any dispute between the Borrower and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of the Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of the Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against the Borrower or any of such other guarantors and whether or not the Borrower is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor’s liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if the Administrative Agent is awarded a judgment in any suit brought to enforce a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor’s liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate under the relevant Loan Document or Secured Swap Agreement, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor’s liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the
Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith or any applicable Secured Swap Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any other Loan Party or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Loan Documents or any Secured Swap Agreement; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations (other than contingent indemnification obligations for which no claim has been made, Obligations in respect of Secured Swap Agreements and the cancellation or expiration or cash collateralization of all Letters of Credit in an amount equal to 105% of Letter of Credit Usage at such time on terms reasonably satisfactory to Issuing Bank)), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Loan Documents, any Secured Swap Agreements, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Loan Documents, any Secured Swap Agreements or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Loan Document, such Secured Swap Agreement or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Loan Documents, any Secured Swap Agreements or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary’s consent to the change, reorganization or termination of the corporate structure or existence of the Borrower or any of its Restricted Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set offs or counterclaims which the Borrower may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.
Anything contained in this Agreement to the contrary notwithstanding, the obligations of each Guarantor under this Agreement shall be limited to an aggregate amount equal to the largest amount that would not render its obligations under this Agreement subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any similar federal or state law.

Section 7.4 Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of the Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (1) proceed against the Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (2) proceed against or exhaust any security held from the Borrower, any such other guarantor or any other Person, (3) proceed against or have resort to any balance of any deposit account or credit on the books of any Beneficiary in favor of any Loan Party or any other Person, or (4) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Borrower or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary’s errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith, gross negligence or willful misconduct; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor’s obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor’s liability hereunder or the enforcement hereof, (iii) any rights to set offs, recoupments and counterclaims, (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security or lien or any property subject thereto, and (v) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, the Secured Swap Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to the Borrower and notices of any of the matters referred to in Section 7.3 and any right to consent to any thereof; and (f) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof, in each case other than the indefeasible payment in full of the Guaranteed Obligations.

Section 7.5 Guarantors’ Rights of Subrogation, Contribution, Etc. Until the Guaranteed Obligations shall have been paid in full (other than contingent indemnification obligations for which no claim has been made and Obligations under or in respect of Secured Swap Agreements) and the Commitments shall have terminated, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against the Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (i) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against the Borrower with respect to the Guaranteed Obligations, (ii) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against the Borrower, and (iii) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been paid in full (other than contingent indemnification obligations for which no claim has been made, Obligations under or in respect of Secured Swap Agreements and the cancellation or expiration or cash collateralization of all Letters of Credit in an
amount equal to 105% of Letter of Credit Usage at such time on terms reasonably satisfactory to the Issuing Bank) and the Commitments shall have terminated, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement, indemnification or contribution such Guarantor may have against the Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against the Borrower, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations (other than contingent indemnification obligations for which no claim has been made and Obligations under or in respect of Secured Swap Agreements) shall not have been paid in full, such amount shall be held in trust for the Administrative Agent on behalf of the Beneficiaries and shall forthwith be paid over to the Administrative Agent for the benefit of the Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

Section 7.6 Subrogation of Other Obligations. Any Indebtedness of the Borrower or any Guarantor now or hereafter held by any Guarantor (the “Obligee Guarantor”) is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for the Administrative Agent on behalf of the Beneficiaries and shall forthwith be paid over to the Administrative Agent for the benefit of the Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

Section 7.7 Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been paid in full and the Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled or cash collateralized in an amount equal to 105% of Letter of Credit Usage at such time. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

Section 7.8 Authority of Guarantors or the Borrower. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or the Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

Section 7.9 Financial Condition of the Borrower. Any Loan may be made to the Borrower or continued from time to time and any Secured Swap Agreement may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of the Borrower at the time of any such grant or continuation or at the time such Secured Swap Agreement is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor’s assessment, of the financial condition of the Borrower. Each Guarantor has adequate means to obtain information from the Borrower on a continuing basis concerning the financial condition of the Borrower and its ability to perform its obligations under the Loan Documents and the Secured Swap Agreements, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of the Borrower now known or hereafter known by any Beneficiary.
Section 7.10 Bankruptcy, Etc. So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of the Administrative Agent acting pursuant to the instructions of Required Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against the Borrower or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Borrower or any other Guarantor or by any defense which the Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and the Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve the Borrower of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay the Administrative Agent, or allow the claim of the Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by the Borrower, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

Section 7.11 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty in respect of Obligations under Secured Swap Agreements (provided that, each Qualified ECP Guarantor shall only be liable under this Section 7.11 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 7.11 or otherwise under this Guaranty, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 7.11 shall remain in full force and effect until the Guaranteed Obligations have been paid in full in cash and all Commitments have terminated. Each Qualified ECP Guarantor intends that this Section 7.11 constitute, and this Section 7.11 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act."
ARTICLE VIII

EVENTS OF DEFAULT

Section 8.1 Events of Default.

If any of the following events (each, an “Event of Default”) shall occur:

(a) the Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable and any amount due and payable to Issuing Bank in reimbursement of any drawing under any Letter of Credit, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Section 8.1) payable under any of the Loan Documents, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five Business Days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with this Agreement or any other Loan Document or any amendment or modification thereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement, any other Loan Document or any amendment or modification thereof or thereof or waiver hereunder or thereunder, shall prove to have been incorrect in any material respect when made or deemed made (other than to the extent qualified by materiality or “Material Adverse Effect”, in which case, such representation or warranty shall prove to have been incorrect in any respect);

(d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.2, Section 5.3 (solely with respect to such Loan Party’s existence), Section 5.9, Section 5.10, Section 5.11, Section 5.13, Section 5.15 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any of the Loan Documents (other than those specified in clause (a), (b) or (d) of this Section 8.1), and such failure shall continue unremedied for a period of 30 days after the earlier of (i) a Responsible Officer of such Loan Party becoming aware of such failure and (ii) notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender);

(f) the Borrower or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such failure shall have continued after the applicable grace period, if any;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer permitted hereunder of the property or assets securing such Indebtedness;
(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Subsidiary or its debts, or of a substantial part of its assets, under any Debtor Relief Law or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Debtor Relief Law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Section 8.1, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k)(i) one or more judgments for the payment of money in excess of $5,000,000 in the aggregate shall be rendered against the Borrower, any Subsidiary or any combination thereof (to the extent not paid or covered by a reputable and solvent independent third-party insurance company which has not disputed coverage) and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed (or an action of similar effect in any jurisdiction outside the U.S.), or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Subsidiary to enforce any such judgment and such action shall not be stayed (or an action of similar effect in any jurisdiction outside the U.S.) or (ii) any non-monetary judgment, writ or warrant of attachment or similar process shall be entered or filed against the Borrower, any Subsidiary or any combination thereof or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed (or an action of similar effect in any jurisdiction outside the U.S.) for a period of 30 consecutive days and such non-monetary judgment, writ, warrant of attachment or similar process would reasonably be expected to have a Material Adverse Effect;

(l) one or more ERISA Events shall have occurred;

(m) a Change in Control shall occur; or

(n)(i) any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the obligations hereunder or thereunder, ceases to be in full force and effect; or any Loan Party contests in any manner the validity or enforceability of any Loan Document, (ii) the Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any material portion of the Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document for any reason other than the failure of the Collateral Agent or any Secured Party to take any action within its control or (iii) any Loan Party shall contest in any manner the validity or perfection of any Lien in any material portion of the Collateral purported to be covered by the Collateral Documents;

then, and in every such event (other than an event with respect to the Borrower described in Section 8.1(h) or (i) of this Section), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower,
take any or all of the following actions, at the same or different times: (i) terminate the Commitments and the obligation of Issuing Bank to issue any Letters of Credit, and thereupon the Commitments and such obligations shall terminate immediately, (ii) the Administrative Agent may cause the Collateral Agent to enforce any and all Liens and security interests created pursuant to the Collateral Documents, (iii) direct the Borrower to pay (and the Borrower hereby agrees upon receipt of such notice, or upon the occurrence of any Event of Default specified in Section 8.1(h) or (i), to pay) to the Administrative Agent such additional amounts of cash as reasonably requested by Issuing Bank, to be held as security for the Borrower’s reimbursement Obligations in respect of Letters of Credit then outstanding as set forth in Section 2.4(i) and (iv) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder (including any amounts required to be deposited in respect of Letters of Credit pursuant to Section 2.4(i)), shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in Section 8.1(h) or (i) of this Section, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

Section 8.2 Right to Cure.

(a) Notwithstanding anything to the contrary contained in Section 8.1, in the event that the Borrower shall fail to comply with the requirements of the Financial Performance Covenant as of the last day of any fiscal quarter, at any time after the end of such fiscal quarter until the expiration of the 10th Business Day subsequent to the earlier of (i) the date on which a Compliance Certificate with respect to such fiscal quarter (or the fiscal year ended on the last day of such fiscal quarter) is delivered in accordance with Section 5.1(c) and (ii) the date on which the financial statements with respect to such fiscal quarter (or the fiscal year ended on the last day of such fiscal quarter) are required to be delivered pursuant to Section 5.1(a) or (b), as applicable, the Borrower shall have the right to issue Qualified Equity Interests for cash or otherwise receive cash contributions to the capital of the Borrower for Qualified Equity Interests (collectively, the “Cure Right”), and upon the receipt by the Borrower of the net cash proceeds of such issuance (the “Cure Amount”) pursuant to the exercise by the Borrower of such Cure Right the Financial Performance Covenant shall be recalculated giving effect to the following pro forma adjustment:

(i) Consolidated Adjusted EBITDA shall be increased with respect to such applicable fiscal quarter and any four fiscal quarter period that contains such fiscal quarter, solely for the purpose of measuring the Financial Performance Covenant and not for any other purpose under this Agreement, by an amount equal to the Cure Amount; and

(ii) if, after giving effect to the foregoing pro forma adjustment (without giving effect to any repayment of any Indebtedness with any portion of the Cure Amount or any portion of the Cure Amount on the balance sheet of the Borrower and the Restricted Subsidiaries (in each case, with respect to such fiscal quarter only)), the Borrower and the Restricted Subsidiaries shall then be in compliance with the requirements of the Financial Performance Covenant, the Borrower shall be deemed to have satisfied the requirements of the Financial Performance Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or Default or Event of Default of the Financial Performance Covenant that had occurred shall be deemed cured for the purposes of this Agreement.
Section 8.2 Cure. Notwithstanding anything herein to the contrary, (i) in each four consecutive fiscal quarter period of the Borrower there shall be at least two fiscal quarters in which the Cure Right is not exercised, (ii) during the term of this Agreement, the Cure Right shall not be exercised more than four times and (iii) for purposes of this Section 8.2, the Cure Amount shall be no greater than the amount required for purposes of complying with the Financial Performance Covenant and any amounts in excess thereof shall not be deemed to be a Cure Amount. Notwithstanding any other provision in this Agreement to the contrary, the Cure Amount received pursuant to any exercise of the Cure Right shall be disregarded for all other purposes, such as for purposes of determining the applicable Commitment Fee Rate and for purposes of determining any available basket under Article VI of this Agreement. For the avoidance of doubt, in the event that the Borrower shall fail to comply with the requirements of the Financial Performance Covenant as of the last day of any fiscal quarter, an Event of Default shall occur as of such day unless and until such breach is cured pursuant to this Section 8.2.

Section 8.3 Application of Proceeds. At the request of the Required Lenders after the occurrence and during the continuance of an Event of Default and upon the exercise of remedies provided for in Section 8.2, any amounts received by any Agent on account of the Obligations (whether payments or proceeds of Collateral) shall be applied by such Agent in the following order:

First, to the payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest but including any expenses incurred in connection with the exercise of remedies against any Loan Party or the Collateral, fees, charges and disbursements of counsel to any Agent and amounts payable under Sections 2.14, 2.15 and 2.16) payable to any Agent in its capacity as such (including interest thereon);

Second, to the payment of that portion of the Obligations constituting interest and principal in respect of Swing Line Loans and unreimbursed Letter of Credit drawings, in each case, which have not yet been converted into Revolving Loans, ratably among the Issuing Bank and Swing Line Lender in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit fees payable under Section 2.11(c)) payable to the Lenders or the Issuing Bank (including any Letter of Credit fronting fees and Issuing Bank fees payable under Section 2.11(d) and the reasonable fees, charges and disbursements of counsel to the respective Lenders and the Issuing Bank and amounts payable under Sections 2.14, 2.15 and 2.16), in each case, ratably among them in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit fees payable under Section 2.11(c) and interest on the Loans, in each case, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Obligations constituting unpaid principal of the Revolving Loans ratably among the Lenders in proportion to the respective amounts described in this clause Fifth held by them;

Sixth, to the Issuing Bank, to cash collateralize that portion of the Letter of Credit Usage comprised of the aggregate undrawn amount of Letters of Credit pursuant to Section 2.4(i).
Seventh, to the payment of all other Obligations of the Loan Parties that are then due and payable to the Administrative Agent and the other Secured Parties on such date, in each case, ratably among them in proportion to the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date;

Eighth, for the account of any applicable Lender Counterparty, to cash collateralize Obligations arising under any then outstanding Secured Swap Agreements, in each case, ratably among them in proportion to the respective amounts described in this clause Eighth payable to them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full (excluding, for this purpose, any Obligations which have been cash collateralized in accordance with the terms hereof), to the Borrower or as otherwise in accordance with any Requirement of Law.

Subject to Sections 2.4 and 2.21, amounts used to cash collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Sixth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as cash collateral (whether for Letters of Credit after all Letters of Credit have either been fully drawn or expired, or for Obligations in respect of any Secured Swap Agreements after all such agreements have been terminated), such remaining amount shall be applied to the other Obligations, if any, in the order set forth above, and, if any amount then remains on deposit, it shall be promptly distributed to the Borrower.

ARTICLE IX
THE AGENT

Each of the Lenders (including in its capacity as a potential counterparty under a Secured Swap Agreement), Secured Party and Issuing Bank hereby irrevocably appoints Morgan Stanley Senior Funding, Inc. as the Administrative Agent and Collateral Agent (and Morgan Stanley Senior Funding, Inc. hereby accepts such appointment) and authorizes the Administrative Agent and the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent and the Collateral Agent by the terms hereof, together with such actions and powers as are reasonably incidental thereto. Except, in each case, as set forth in the sixth paragraph of this Article, the provisions of this Article are solely for the benefit of the Agent and the Lenders, and the Borrower shall not have rights as a third party beneficiary of any of such provisions.

The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Agent hereunder and without any duty to account therefor to the Lenders.

The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent: (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.2 or in the other Loan Documents); provided that the Agent shall not be required to take any
action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law, and (c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as Agent or any of its Affiliates in any capacity. The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.2) or (ii) in the absence of its own gross negligence or willful misconduct. The Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Agent by the Borrower or a Lender, and the Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection herewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed or sent by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

The Administrative Agent shall have the right to resign at any time by giving prior written notice thereof to the Lenders and the Borrower. The Administrative Agent shall have the right to appoint a financial institution to act as the Administrative Agent and/or the Collateral Agent hereunder, subject to the reasonable satisfaction of the Borrower and the Required Lenders, and the Administrative Agent’s resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation, (ii) the acceptance of such successor Administrative Agent by the Borrower and the Required Lenders or (iii) such other date, if any, agreed to by the Borrower and the Required Lenders. Upon any such notice of resignation, if a successor Administrative Agent has not already been appointed by the retiring Administrative Agent, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor Administrative Agent. If neither the Required Lenders nor the
Administrative Agent have appointed a successor Administrative Agent, the Required Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that, until a successor Administrative Agent is so appointed by the Required Lenders or the Administrative Agent, any collateral security held by the Administrative Agent in its role as the Collateral Agent on behalf of the Lenders and Issuing Bank under any of the Loan Documents shall continue to be held by the retiring Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Any successor Administrative Agent shall be a bank with an office in the United States or an Affiliate of any such bank with an office in the United States. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent and the retiring or removed Administrative Agent shall promptly (x) transfer to such successor Administrative Agent all sums, securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Loan Documents, and (y) execute and deliver to such successor Administrative Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Collateral Documents, whereupon such retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder. Except as provided above, any resignation of Morgan Stanley Senior Funding, Inc. or its successor as the Administrative Agent pursuant to this Article shall also constitute the resignation of Morgan Stanley Senior Funding, Inc. or its successor as the Collateral Agent. After any retiring Administrative Agent’s resignation hereunder as Administrative Agent, the provisions of this Article IX shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder. Any successor Administrative Agent appointed pursuant to this Article shall, upon its acceptance of such appointment, become the successor Collateral Agent for all purposes hereunder.

In addition to the foregoing, the Collateral Agent may resign at any time by giving prior written notice thereof to the Lenders and the Grantors. The Administrative Agent shall have the right to appoint a financial institution as the Collateral Agent hereunder, subject to the reasonable satisfaction of the Borrower and the Required Lenders and the Collateral Agent’s resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation, (ii) the acceptance of such successor Collateral Agent by the Borrower and the Required Lenders or (iii) such other date, if any, agreed to by the Required Lenders and the Borrower. Upon any such notice of resignation, the Required Lenders shall have the right, upon five Business Days’ notice to the Administrative Agent and in consultation with the Borrower, to appoint a successor Collateral Agent. Until a successor Collateral Agent is so appointed by the Required Lenders or the Administrative Agent, any collateral security held by the Collateral Agent on behalf of the Lenders and Issuing Bank under any of the Loan Documents shall continue to be held by the retiring Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as the Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent under this Agreement and the Collateral Documents, and the retiring Collateral Agent under this Agreement shall promptly (x) transfer to such successor Collateral Agent all sums, securities and other items of Collateral held hereunder or under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreement and the Collateral Documents, and (y) execute and deliver to such successor Collateral Agent or otherwise authorize the filing of such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the security interests created under the Collateral Documents, whereupon such retiring Collateral Agent shall be discharged from its duties and obligations under this Agreement and the Collateral Documents. After any retiring
Collateral Agent’s resignation or removal hereunder as the Collateral Agent, the provisions of this Agreement and the Collateral Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement or the Collateral Documents while it was the Collateral Agent hereunder.

Any resignation of Morgan Stanley Senior Funding, Inc. or its successor as the Administrative Agent pursuant to this Article IX shall also constitute the resignation of Morgan Stanley Bank, N.A. or its successor as Swing Line Lender, and any successor Administrative Agent appointed pursuant to this Section shall, upon its acceptance of such appointment, become the successor Swing Line Lender for all purposes hereunder. In such event (i) the Borrower shall prepay any outstanding Swing Line Loans made by the retiring or removed Administrative Agent in its capacity as Swing Line Lender, (ii) upon such prepayment, the retiring or removed Administrative Agent and Swing Line Lender shall surrender any Swing Line Note held by it to the Borrower for cancellation, and (iii) the Borrower shall issue, if so requested by successor Administrative Agent and Swing Line Lender, a new Swing Line Note to the successor Administrative Agent and Swing Line Lender, in the principal amount of the Swing Line Loan Sublimit then in effect and with other appropriate insertions.

Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Anything herein to the contrary notwithstanding, none of the Joint Bookrunners or Co-Syndication Agents shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent or a Lender hereunder.

Each Secured Party hereby authorizes the Administrative Agent or the Collateral Agent, as applicable, on behalf of and for the benefit of the Secured Parties, to be the agent for and representative of the Secured Parties with respect to the Guaranty, the Collateral and the Collateral Documents; provided that neither the Administrative Agent nor the Collateral Agent shall owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure or any other obligation whatsoever to any holder of Obligations with respect to any Secured Swap Agreement. Subject to Section 10.2, without further written consent or authorization from any Secured Party, the Administrative Agent or the Collateral Agent, as applicable, may execute any documents or instruments necessary to (i) in connection with a sale or disposition of assets permitted by this Agreement, release any Lien encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.2) have otherwise consented or (ii) release any Guarantor from the Guaranty pursuant to Section 10.17 or with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.2) have otherwise consented.

Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent, the Collateral Agent and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of the Secured Parties in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by the
Collateral Agent, and (ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Collateral Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Collateral Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition.

No Secured Swap Agreement will create (or be deemed to create) in favor of any Lender Counterparty that is a party thereto any rights to manage or release any Collateral or of the obligations of any Guarantor under the Loan Documents except as expressly provided in clause (vii) of the last sentence of Section 10.2(b) of this Agreement and Section 7.3 of the Security Agreement. By accepting the benefits of the Collateral, such Lender Counterparty shall be deemed to have appointed Collateral Agent as its agent and agreed to be bound by the Loan Documents as a Secured Party, subject to the limitations set forth in this paragraph.

Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (other than contingent indemnification obligations for which no claim has been made and Obligations in respect of any Secured Swap Agreement) have been paid in full, all Commitments have terminated or expired and no Letter of Credit shall be outstanding (or the outstanding Letters of Credit have been cash collateralized in an amount equal to 105% of all Letter of Credit Usage at such time in a manner satisfactory to Issuing Bank), upon request of the Borrower, the Administrative Agent shall (without notice to, or vote or consent of, any Lender, or any Affiliate of any Lender that is a party to any Secured Swap Agreement) take such actions as shall be required to release its security interest in all Collateral, and to release all Guaranteed Obligations provided for in any Loan Document, whether or not on the date of such release there may be outstanding Obligations in respect of Secured Swap Agreements. Any such release of Guaranteed Obligations shall be deemed subject to the provision that such Guaranteed Obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

ARTICLE X

MISCELLANEOUS

Section 10.1 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower, to it at FitBit, Inc., 150 Spear Street, San Francisco, California 94105, Attention: Meena Srinivasan (email: msrinivasan@fitbit.com), with a copy to Fenwick & West LLP, 801 California Street, Mountain View, California 94041, Attention: David Michaels;
(ii) if to the Administrative Agent or the Collateral Agent, to it at Morgan Stanley Senior Funding, Inc., 1 Pierrepont Plaza, 7th Floor Brooklyn, New York, 11201, Attention: Agency Team, (Telecopy No. 212 507 6680);

(iii) if to the Swing Line Lender, to it at Morgan Stanley Bank, N.A., 1 Pierrepont Plaza, 7th Floor Brooklyn, New York, 11201, Attention: Agency Team, (Telecopy No. 212 507 6680);

(iv) if to Issuing Bank, to it at Morgan Stanley Bank, N.A., 1300 Thames Street, Thames Street Wharf, 4th Floor, Baltimore, MD 21231, Attention: Letter of Credit Team, (Telecopy No. 212 507 5010); and

(v) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Notices and other communications to the Lenders, Swing Line Lender and Issuing Bank hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender, Swing Line Lender and Issuing Bank. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

The Borrower agrees that the Agent may make the Communications (as defined below) available to the Lenders by posting the Communications on IntraLinks, the Internet or another similar electronic system (the “Platform”). THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications effected thereby (the “Communications”). No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. No event shall the Agent or any of its Related Parties (collectively, the “Agent Parties”) be responsible or liable for damages arising from the unauthorized use by others of information or other materials obtained through internet, electronic, telecommunications or other information transmission, except to the extent that such damages have resulted from the willful misconduct or gross negligence of such Agent Party (as determined in a final, non-appealable judgment by a court of competent jurisdiction).

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(a) No failure or delay by the Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) None of this Agreement, any other Loan Document or any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders: provided, however, that no such amendment, waiver or consent shall: (i) extend or increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any reimbursement obligation in respect of any Letter of Credit, or reduce any fees payable thereunder, without the written consent of each Lender directly affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan, or any interest thereon, or any fees payable thereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly affected thereby; provided, however, that notwithstanding clause (ii) or (iii) of this Section, only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay interest at the default rate set forth in Section 2.12(c), (iv) change Section 2.17(b), Section 2.17(c) or any other Section hereof providing for the ratably treatment of the Lenders, in each case in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) release all or substantially all of the value of any Guaranty or the Collateral, without the written consent of each Lender, except to the extent the release of any Guarantor or any Collateral is permitted pursuant to Article IX or Section 10.17 (in which case such release may be made by the Administrative Agent or the Collateral Agent, as applicable, acting alone), (vi) change any of the provisions of this Section or the percentage referred to in the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, (vii) extend the stated expiration date of any Letter of Credit beyond the Commitment Termination Date without the written consent of each Lender directly affected thereby, (viii) waive any condition set forth in Section 4.1 (other than as it relates to the payment of fees and expenses of counsel), or, in the case of any Loans made on the Closing Date, Section 4.2, without the written consent of each Lender or (ix) change Section 8.3 without the written consent of each Lender. Notwithstanding anything to the contrary herein, (i) no such agreement shall amend, modify or otherwise affect the rights or duties of the Agent hereunder without the prior written consent of the Agent, (ii) no such amendment shall amend, modify, terminate or waive any obligation of the Borrower relating to the participation of Lenders in Letters of Credit as provided in Section 2.4(c) without the written consent of the Administrative Agent and of Issuing Bank, (iii) no such amendment shall amend, modify, terminate or waive any provision hereof relating to the Swing Line Sublimit or the Swing Line Loans without the consent of Swing Line Lender, (iv) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting

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Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or the termination thereof extended without the consent of such Lender, (y) the principal amount of any Defaulting Lender’s Loan, or the interest rate thereon or any fees payable hereunder to any Defaulting Lender may not be reduced without the consent of such Lender and (z) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender, (v) this Agreement may be amended in writing by the Administrative Agent, the Borrower and, if applicable, the Incremental Lenders to provide for a Commitment Increase in the manner contemplated by Section 2.19 and the extension of the Maturity Date as contemplated by Section 2.20, (vi) the provisions of Section 2.19 requiring the Borrower to offer a Commitment Increase to the Lenders prior to any other Person may be amended or waived with the consent of the Required Lenders and (vii) no such amendment shall amend, modify or waive this Agreement or the Security Agreement so as to alter the ratability treatment of Obligations arising under the Loan Documents and Obligations arising under Secured Swap Agreements or the definition of “Lender Counterparty,” “Secured Hedge Agreement,” “Obligations,” or “Secured Obligations” (as defined in any applicable Collateral Document), in each case in a manner adverse to any Lender Counterparty with Obligations then outstanding without the written consent of any such Lender Counterparty.

Section 10.3 Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay (i) all reasonable and documented out of pocket expenses incurred by the Administrative Agent, the Collateral Agent, the Co-Syndication Agents, the Joint Bookrunners and their respective Affiliates, including, without limitation, the reasonable and documented fees, disbursements and other charges of one firm of counsel for the Administrative Agent, the Collateral Agent, the Co-Syndication Agents and the Joint Bookrunners, taken as a whole, (and if reasonably necessary (as determined by the Administrative Agent in consultation with the Borrower), of a single local counsel in each appropriate jurisdiction) in connection with the syndication of the credit facilities provided for herein, the preparation, execution, delivery and administration of this Agreement, any other Loan Document or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all documented out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent, the Co-Syndication Agents, the Joint Bookrunners, Issuing Bank or any Lender, including, without limitation, the fees, disbursements and other charges of one firm of counsel for the Administrative Agent, the Collateral Agent and the Original Lenders, taken as a whole, (and if reasonably necessary (as determined by the Administrative Agent in consultation with the Borrower), of a single local counsel in each appropriate jurisdiction and in the case of an actual or potential conflict of interest where the Administrative Agent, the Collateral Agent or any Original Lender affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel for such affected person), in connection with the enforcement or protection of its rights in connection with this Agreement or any other Loan Document, including its rights under this Section, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) The Borrower shall indemnify the Administrative Agent and each Lender and their respective affiliates and their partners, directors, officers, employees, agents and advisors (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, costs or reasonable and documented expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective
obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, or, in the case of the Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use of the proceeds therefrom, including, but not limited to, reasonable attorneys’ fees and settlement costs, (iii) any actual or alleged presence or release of Materials of Environmental Concern on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto (and regardless of whether such matter is initiated by a third party or the Borrower or any Affiliates of the Borrower); provided that such indemnity shall not, as to any Indemnitee, be available (w) with respect to Taxes (and amounts relating thereto), the indemnification for which shall be governed solely and exclusively by Sections 2.14 and 2.16, (x) to the extent that such losses, claims, damages, liabilities, costs or reasonable and documented expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) if arising from a material breach by such Indemnitee or one of its Affiliates of its obligations under this Agreement or any other Loan Document (as determined by a court of competent jurisdiction by final and non-appealable judgment) or (z) if arising from any dispute between and among Indemnitees that does not involve an act or omission by the direct parent of the Borrower, the Borrower or any of its Subsidiaries (as determined by a court of competent jurisdiction by final and non-appealable judgment) other than any proceeding against the Administrative Agent, the Collateral Agent, the Co-Syndication Agents or the Joint Bookrunners in such capacity.

(c) To the extent that any Loan Party fails to pay any amount required to be paid by it to the Agent under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Agent such Lender’s Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent in its capacity as such.

(d) Without limiting in any way the indemnification obligations of the Loan Parties pursuant to Section 10.3(b) or of the Lenders pursuant to Section 10.3(e), to the extent permitted by applicable law, each party hereto shall not assert, and hereby waives, any claim against any Indemnitee or the Borrower or any of its Subsidiaries, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the Transactions or any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for (i) any indirect, special, exemplary, incidental, punitive or consequential damages (including, without limitation, any loss of profits, business or anticipated savings) which may be alleged as a result of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the Transactions or any Loan or the use of the proceeds thereof and (ii) any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.
Section 10.4 Successors and Assigns

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and Issuing Bank (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (but not to the Borrower or an Affiliate thereof or any natural person) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee and provided further that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 5 Business Days after having received notice thereof; and

(B) the Administrative Agent, Issuing Bank and Swing Lender; provided that no such consent shall be required for an assignment of any Commitment to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment, an Affiliate of a Lender, an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender’s Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 (or a greater amount that is an integral multiple of $1,000,000) unless each of the Borrower and the Administrative Agent otherwise consent; provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement;

(C) unless waived by the Administrative Agent in its sole discretion, the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates
one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee’s compliance procedures and applicable laws, including Federal and state securities laws;

(E) no such assignment shall be made to (i) any Loan Party nor any Affiliate of a Loan Party or (ii) any Defaulting Lender or any of its subsidiaries, or any Person, who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (ii); and

(F) in connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

For the purposes of this Section, the term “Approved Fund” has the following meaning:

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

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 2.14, Section 2.15, Section 2.16 and Section 10.3); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender’s having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.
(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and amounts on the Loans owing to, and drawings under Letters of Credit owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive (absent manifest error), and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The Borrower agrees to indemnify the Administrative Agent from and against any and all losses, claims, damages and liabilities of whatsoever nature which may be imposed on, asserted against or incurred by the Administrative Agent in performing its duties under this Section 10.4(b)(iv), except to the extent that such losses, claims, damages or liabilities are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of the Administrative Agent. The Loans (including principal and interest) are registered obligations and the right, title, and interest of any Lender or its assigns in and to such Loans shall be transferable only upon notation of such transfer in the Register.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee’s completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.6(b), Section 2.17(d) or Section 10.3(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (but not to the Borrower or an Affiliate thereof or any natural person) (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 10.2(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 2.14, Section 2.15 and Section 2.16 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.8 as though it were a Lender, provided such Participant agrees to be subject to Section 2.17(c) as though it were a Lender.
(ii) A Participant shall not be entitled to receive any greater payment under Section 2.14 or Section 2.16 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.16 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.16(e) as though it were a Lender.

(d) Any Lender may at any time, without consent of the Borrower or the Administrative Agent, pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 10.5 Survival. All covenants, agreements, representations and warranties made by the Loan Parties herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Section 2.14, Section 2.15, Section 2.16 and Section 10.3 and Article IX shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitments, the cancellation or expiration of the Letters of Credit and the reimbursement of any amounts drawn thereunder, the resignation of the Agent, the replacement of any Lender, or the termination of this Agreement or any provision hereof.

Section 10.6 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.7 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.
Section 10.8 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, Issuing Bank and each of its respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other obligations at any time owing by such Lender, Issuing Bank or Affiliate to or for the credit or the account of any Loan Party against any of and all the obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document held by such Lender or Issuing Bank, irrespective of whether or not such Lender or Issuing Bank shall have made any demand under this Agreement or such other Loan Document and although such obligations may be unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.21 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, Issuing Bank and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and Issuing Bank under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender or Issuing Bank may have. Each Lender and Issuing Bank agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.9 Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT AND ALL CLAIMS AND CAUSE OF ACTION RELATED TO OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

(b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.
(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.1. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 10.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTAINED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 10.12 Confidentiality.

(a) Each of the Agent and the Lenders (which term shall for the purposes of this Section 10.12 includes the Issuing Bank) agrees to (i) maintain the confidentiality of the Information (as defined below), (ii) not disclose any Information to any individual or organization, either internally or externally, without the prior written consent of the Borrower (which consent shall not be unreasonably withheld, conditioned or delayed), and (iii) not use the Information for any purpose except in connection with the Loan Documents, except that Information may be disclosed (A) to its and its Affiliates’ directors, officers, employees and agents, including accountants, legal counsel and other advisors, or to any credit insurance provider relating to any Loan Party and its obligations, in each case whom it reasonably determines needs to know such information in connection with this Agreement and the transactions contemplated hereby (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (B) to the extent requested by any regulatory authority or any self-regulatory body claiming oversight over any Lender or any of its Affiliates, (C) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (in which case the Agent or such Lender, as applicable, agrees, to the extent permitted by applicable law, to inform the Borrower promptly thereof), (D) to any other party to this Agreement, (E) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (F) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of any of its rights or obligations under this Agreement, (G) with the consent of the Borrower or (H) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Agent or any Lender on a non-confidential basis from a source other than the Borrower. In addition, the Agent and the Lenders may disclose Limited Information to (a) any Participant or “bona fide” prospective Participant in, or any “bona fide” prospective assignee of, the Commitments, the Loans or any Lender’s rights or obligations under this Agreement or (b) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations; provided that (x) such Participant, prospective Participant, prospective assignee, actual or prospective counterparty or advisor is advised of and agrees, in advance of such disclosure, in writing (including pursuant to customary “click-through” procedures), to be bound by either the
provisions of this Section 10.12 or other provisions that are at least as restrictive as the provisions contained in this Section 10.12 and (y) the Agent and Lenders give notice to the Borrower prior to the disclosure of such Limited Information (including the identity of the party to whom such Limited Information is to be disclosed and the nature of the Limited Information to be disclosed) to the extent permitted by applicable law or regulation (other than information provided by the Borrower pursuant to Sections 3.4(a), 5.1(a) and (b), and information described in clauses (d) and (e) of the definition of “Limited Information”) (it being understood that no consent of the Borrower shall be required with respect to any disclosure of Limited Information permitted hereunder). For the purposes of this Section, “Information” means all information received from the Borrower, or from any of its Affiliates, representatives or advisors on behalf of the Borrower, relating to the Borrower or its business, other than any such information that is available to the Agent or any Lender on a non-confidential basis prior to disclosure by the Borrower, or by any of its Affiliates, representatives or advisors on behalf of the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 10.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(c) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER AND ITS RELATED PARTIES OR ITS SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

Section 10.13 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.
Section 10.14 No Advisory or Fiduciary Responsibility. In connection with all aspects of each Transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Subsidiaries’ understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Agent, the Co-Syndication Agents, the Joint Bookrunners and the Lenders are arm’s-length commercial transactions between such Loan Party and its Affiliates, on the one hand, and the Agent, the Co-Syndication Agents, the Joint Bookrunners and the Lenders, on the other hand, (B) such Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) such Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the Transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Agent, the Co-Syndication Agents, the Joint Bookrunners and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Loan Party or any of its Subsidiaries, or any other Person and (B) neither the Agent, any Co-Syndication Agent, any Joint Bookrunner nor any Lender has any obligation to any Loan Party or any of its Affiliates with respect to the Transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agent, the Co-Syndication Agents, the Joint Bookrunners and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of such Loan Party and its Affiliates, and neither the Agent, any Co-Syndication Agent, any Joint Bookrunner nor any Lender has any obligation to disclose any of such interests to such Loan Party or its Affiliates. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Agent, the Co-Syndication Agents, the Joint Bookrunners and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.15 Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.16 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA Patriot Act hereby notifies each Loan Party that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA Patriot Act. Each Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act.

Section 10.17 Release of Guarantors. In the event that all the Equity Interests in any Guarantor are sold, transferred or otherwise disposed of to a Person other than the Borrower or its Restricted Subsidiaries in a transaction permitted under this Agreement, the Administrative Agent shall, at the Borrower’s expense, promptly take such action and execute such documents as the Borrower may reasonably request to terminate the guarantee of such Guarantor.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

FITBIT, INC., as Borrower

By: /s/ William Zerella
Name: William Zerella
Title: Chief Financial Officer

Signature Page to Credit Agreement
MORGAN STANLEY SENIOR FUNDING, INC.,
as Administrative Agent and Collateral Agent

By: /s/ Jon Raven
Name: Jon Raven
Title: Authorized Signatory

Signature Page to Credit Agreement
MORGAN STANLEY BANK, N.A.,
as Issuing Bank, Swing Line Lender and Lender

By: /s/ Jon Raven
Name: Jon Raven
Title: Authorized Signatory

Signature Page to Credit Agreement
SILICON VALLEY BANK, as Lender

By:  /s/ Jennie T. Bartlett
Name: Jennie T. Bartlett
Title: Vice President

Signature Page to Credit Agreement
SUNTRUST BANK, as Lender

By: /s/ Chad Ramsey
Name: Chad Ramsey
Title: Director

Signature Page to Credit Agreement
<table>
<thead>
<tr>
<th>Lender</th>
<th>Commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Morgan Stanley Bank, N.A.</td>
<td>$12,125,000</td>
</tr>
<tr>
<td>Silicon Valley Bank</td>
<td>$12,125,000</td>
</tr>
<tr>
<td>SunTrust Bank</td>
<td>$12,125,000</td>
</tr>
<tr>
<td>City National Bank</td>
<td>$3,625,000</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>$40,000,000</strong></td>
</tr>
</tbody>
</table>
Schedule 3.2
Governmental Approvals

None.

3
Schedule 3.3
Requirements of Law

None.

4
Schedule 3.4
Financial Condition

None.

5
Schedule 3.6
Disclosed Matters

None.
1. 2007 Stock Plan, as amended.
## Schedule 3.12
### Subsidiaries

<table>
<thead>
<tr>
<th>Entity</th>
<th>Name</th>
<th>Jurisdiction</th>
<th>Ownership Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Borrower</td>
<td>FitBit, Inc.</td>
<td>Delaware</td>
<td>N/A</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>FitBit Limited</td>
<td>United Kingdom</td>
<td>100% owned by FitBit, Inc.</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>FitBit International, LLC</td>
<td>Delaware</td>
<td>100% owned by FitBit, Inc.</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>FitBit Korea Ltd.</td>
<td>Korea</td>
<td>100% owned by FitBit International, LLC</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>Fitbit (Hong Kong) Limited</td>
<td>Hong Kong</td>
<td>100% owned by FitBit International, LLC</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>Fitbit (Australia) Pty Ltd</td>
<td>Australia</td>
<td>100% owned by FitBit International, LLC</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>Fitbit International Holdings</td>
<td>Ireland</td>
<td>100% owned by FitBit International, LLC</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>Fitbit Holdings</td>
<td>Ireland</td>
<td>100% owned by Fitbit International Holdings</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>Fitbit International Limited</td>
<td>Ireland</td>
<td>100% owned by Fitbit Holdings</td>
</tr>
<tr>
<td>Subsidiary</td>
<td>Fitbit Bel</td>
<td>Belarus</td>
<td>0.01% owned by FitBit, Inc.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>99.99% owned by Fitbit Limited</td>
</tr>
</tbody>
</table>

* Formation of corporate entities in Japan and China are in progress.
Schedule 3.18(a)
UCC Filing Jurisdictions

1. UCC Financing Statement naming FitBit, Inc., as “debtor” and the Administrative Agent as “secured party” to be filed with the Secretary of State of the State of Delaware.

2. UCC Financing Statement naming FitBit International, LLC as “debtor” and the Administrative Agent as “secured party” to be filed with the Secretary of State of the State of Delaware.
Schedule 5.15
Post-Closing Actions

1. Fitbit International Holdings
2. Fitbit (Australia) Pty Ltd.
Schedule 6.2
Existing Liens

None.

11
Schedule 6.5
Existing Restrictions

None.

12
## Schedule 6.7
### Existing Investments

<table>
<thead>
<tr>
<th>Investment</th>
<th>Amount Invested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity Capitalization of Fitbit Limited (UK sub)</td>
<td>$100.00 GBP ($166.00 USD)</td>
</tr>
<tr>
<td>Equity Capitalization of Fitbit International, LLC</td>
<td>$8,100,000 USD</td>
</tr>
<tr>
<td>Equity Capitalization of Fitbit Korea Ltd.</td>
<td>$94,122.23 USD</td>
</tr>
<tr>
<td>Equity Capitalization of Fitbit (Hong Kong) Limited</td>
<td>$1,000 HKD ($128.76 USD)</td>
</tr>
<tr>
<td>Equity Capitalization of Fitbit International Holdings (Ireland)</td>
<td>$8,001,000 USD</td>
</tr>
<tr>
<td>Equity Capitalization of Fitbit Holdings (Ireland)</td>
<td>$8,001,000 USD</td>
</tr>
<tr>
<td>Equity Capitalization of Fitbit International Limited (Ireland)</td>
<td>€2 EUR ($2.72 USD)</td>
</tr>
<tr>
<td>Equity Capitalization of Fitbit Bel</td>
<td>BYR 103,000 ($10,000 USD)</td>
</tr>
<tr>
<td></td>
<td>Consisting of:</td>
</tr>
<tr>
<td></td>
<td>Fitbit, Inc. - $1.00 USD</td>
</tr>
<tr>
<td></td>
<td>Fitbit Limited - $9,999.00 USD</td>
</tr>
<tr>
<td>Equity Capitalization of Fitbit (Australia) Pty Ltd.</td>
<td>$100 AUD ($9,257 USD)</td>
</tr>
</tbody>
</table>
This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [NAME OF ASSIGNOR] (the “Assignor”) and [NAME OF ASSIGNEE] (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Revolving Credit and Guaranty Agreement identified below (as amended, restated, amended and restated, supplemented, extended and/or otherwise modified from time to time, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex I attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the facility identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor:
   [Assignor [is] [is not] a Defaulting Lender]

2. Assignee:
   [and is an Affiliate of [identify Lender]]

3. Borrower: FitBit, Inc. (the “Company”)

4. Administrative Agent: Morgan Stanley Senior Funding, Inc., as the Administrative Agent under the Credit Agreement

5. Credit Agreement: Revolving Credit and Guaranty Agreement, dated as of August 13, 2014, among FitBit, Inc., as the Borrower, the Guarantors party thereto, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., as the Administrative Agent and Collateral Agent, the other agents named therein and Morgan Stanley Bank, N.A., as Issuing Bank and Swing Line Lender.
6. Assigned Interest:

<table>
<thead>
<tr>
<th>Facility Assigned</th>
<th>Aggregate Amount of Commitment/Loans for all Lenders</th>
<th>Amount of Commitment/Loans Assigned</th>
<th>Percentage Assigned of Commitment/Loans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revolving Facility</td>
<td>$</td>
<td>$</td>
<td>%</td>
</tr>
</tbody>
</table>

Effective Date: [TO BE INSERTED BY THE ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREOF.]

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information) will be made available and who may receive such information in accordance with the Assignee’s compliance procedures and applicable laws, including Federal and state securities laws.

[Signature Pages Follow]

1 Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.
The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: ____________________________
Name: __________________________
Title: __________________________

ASSIGNEE

[NAME OF ASSIGNEE]

By: ____________________________
Name: __________________________
Title: __________________________
Consented to and Accepted:

MORGAN STANLEY SENIOR FUNDING, INC.,
AS ADMINISTRATIVE AGENT

By: 
Name: 
Title: 

MORGAN STANLEY BANK, N.A., AS ISSUING BANK

By: 
Name: 
Title: 

MORGAN STANLEY BANK, N.A., AS SWING LINE LENDER

By: 
Name: 
Title: 

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[Consented to:]

[FITBIT, INC.]

By: ________________________________
Name: ________________________________
Title: ________________________________

1 To be added only if the consent of the Company is required by the terms of the Credit Agreement.

A-5
FITBIT, INC. CREDIT AGREEMENT

Standard Terms and Conditions for Assignment and Assumption

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is [not] a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Company, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Company, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received and/or had the opportunity to review a copy of the Credit Agreement to the extent it has in its sole discretion deemed necessary, together with copies of the most recent financial statements delivered pursuant to Sections 5.1(a) and 5.1(b) thereof, as applicable, and such other documents and information as it has in its sole discretion deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) attached to this Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; (b) agrees that it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; (c) appoints and authorizes each of the Administrative Agent and the Collateral Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement and the other Loan Documents as are delegated to or otherwise conferred upon the Administrative Agent or the Collateral Agent, as the case may be, by the terms thereof, together with such powers as are reasonably incidental thereto; and (d) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.
3. **Effect of Assignment.** Upon the delivery of a fully executed original hereof to the Administrative Agent, as of the Effective Date, (i) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Assumption, have the rights and obligations of a Lender thereunder and under the other Loan Documents and (ii) the Assignor shall, to the extent provided in this Assignment and Assumption, relinquish its rights and be released from its obligations under the Credit Agreement and the other Loan Documents.

4. **General Provisions.** This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or other means of electronic imaging shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. THIS ASSIGNMENT AND ASSUMPTION SHALL BE GOVERED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.
FORM OF  
BORROWING REQUEST

Morgan Stanley Senior Funding, Inc., as Administrative Agent  
for the Lenders party to the Credit Agreement referred to below

1 Pierrepont Plaza  
7th Floor  
Brooklyn, New York 11201  
Attention: Agency Team

[Date]

Ladies and Gentlemen:

The undersigned, FitBit, Inc. (the "Borrower"), refers to the Revolving Credit and Guaranty Agreement, dated as of August 13, 2014 (as it may be amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the “Credit Agreement,” the terms defined therein and not otherwise defined herein being used herein as therein defined), among the Borrower, the Guarantors party thereto, the Lenders party thereto (each a "Lender" and collectively, the “Lenders”), Morgan Stanley Senior Funding, Inc., as Collateral Agent, the other agents named therein, Morgan Stanley Bank, N.A., as Issuing Bank and Swing Line Lender, and you, as the Administrative Agent for the Lenders, and hereby gives you notice, irrevocably, pursuant to Section 2.5 of the Credit Agreement, that the undersigned hereby requests a Borrowing under the Credit Agreement, and in that connection sets forth below the information relating to such Borrowing (the “Proposed Borrowing”) as required by Section 2.5 of the Credit Agreement:

(i) The Business Day of the Proposed Borrowing is , 20 .

(ii) The aggregate principal amount of the Proposed Borrowing is .

(iii) The Proposed Borrowing is to consist of [ABR Loans] [Eurodollar Loans].

(iv) The initial Interest Period for the Proposed Borrowing is [one/two/three/six months].

(v) The location and number of the account or accounts to which funds are to be disbursed is as follows:

[Insert location and number of the account(s)]

3 Shall be a Business Day at least one Business Day in the case of ABR Loans and at least three Business Days in the case of Eurodollar Loans, in each case, after the date hereof, provided that any such notice shall be deemed to have been given on a certain day only if given before 12 Noon (New York City time) in the case of ABR Loans or before 11:00 a.m. (New York City time) in the case of Eurodollar Loans, on such day.

4 Such amount to be stated in Dollars.

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The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Borrowing:

(A) the representations and warranties of the Borrower set forth in the Credit Agreement and in the other Loan Documents are and will be true and correct in all material respects (other than to the extent qualified by materiality or “Material Adverse Effect”, in which case, such representations and warranties shall be true and correct in all respects) on and as of the date of the Proposed Borrowing, except that (i) for purposes of this Borrowing Request, the representations and warranties contained in Section 3.4(a) of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 5.1 of the Credit Agreement and (ii) to the extent that such representations and warranties specifically refer to an earlier date, they were true and correct in all material respects (other than to the extent qualified by materiality or “Material Adverse Effect”, in which case, such representations and warranties shall be true and correct in all respects) as of such earlier date;

(B) at the time of and immediately after giving effect to the Proposed Borrowing, no Default or Event of Default has occurred and is continuing; and

(C) after giving effect to such Proposed Borrowing, the Consolidated Total Leverage Ratio, calculated on a Pro Forma Basis as of the last day of the fiscal quarter most recently ended for which financial statements are required to be delivered pursuant to Section 5.1 of the Credit Agreement shall not exceed the maximum Consolidated Total Leverage Ratio permitted under Section 6.12 of the Credit Agreement for such period.

[Signature Page Follows]
The Borrower has caused this Borrowing Request to be executed and delivered by its duly authorized officer as of the date first written above.

Very truly yours,

FITBIT, INC.

By: 
Name:  
Title:  

B-1-3
FORM OF
FORM OF ISSUANCE NOTICE

Reference is made to the Revolving Credit and Guaranty Agreement, dated as of August 13, 2014 (as it may be amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the “Credit Agreement”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among FitBit, Inc., a Delaware corporation (the “Borrower”), the Guarantors from time to time party thereto, the Lenders from time to time party thereto (the “Lenders”), Morgan Stanley Senior Funding, Inc., as the Administrative Agent (together with its permitted successors in such capacity, the “Administrative Agent”) and as Collateral Agent, the other agents named therein and Morgan Stanley Bank, N.A., as Issuing Bank and Swing Line Lender.

Pursuant to Section 2.4 of the Credit Agreement, the Borrower desires a Letter of Credit to be issued in accordance with the terms and conditions of the Credit Agreement on [●] (the “Credit Date”) in an aggregate face amount of $[ , , ].

Attached hereto for each such Letter of Credit are the following:

(a) the stated amount of such Letter of Credit;
(b) the name and address of the beneficiary;
(c) the expiration date; and
(d) either (i) the verbatim text of such proposed Letter of Credit, or (ii) a description of the proposed terms and conditions of such Letter of Credit, including a precise description of any documents to be presented by the beneficiary which, if presented by the beneficiary prior to the expiration date of such Letter of Credit, would require the Issuing Bank to make payment under such Letter of Credit.

The Borrower hereby certifies that:

(i) after issuing such Letter of Credit requested on the Credit Date, the Total Utilization of Commitments shall not exceed the Commitments then in effect;
(ii) as of the Credit Date, the representations and warranties set forth in the Credit Agreement and the other Loan Documents are true and correct in all material respects (other than to the extent qualified by materiality or “Material Adverse Effect”, in which case, such representations and warranties shall be true and correct in all respects) on and as of such Credit Date to the same extent as though made on and as of such date, except that (i) for purposes of this Issuance Notice, the representations and warranties contained in Section 3.4(a) of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 5.1 of the Credit Agreement and (ii) to the extent that such representations and warranties specifically refer to an earlier date, they were true and correct in all material respects (other than to the extent qualified by materiality or “Material Adverse Effect”, in which case, such representations and warranties shall be true and correct in all respects) as of such earlier date;
(iii) at the time of and immediately after issuing such Letter of Credit requested on the Credit Date, no Default or Event of Default has occurred and is continuing.

B-2-1
(iv) after giving effect to such issuance, the Consolidated Total Leverage Ratio, calculated on a Pro Forma Basis as of the last day of the fiscal quarter most recently ended for which financial statements are required to be delivered pursuant to Section 5.1 of the Credit Agreement shall not exceed the maximum Consolidated Total Leverage Ratio permitted under Section 6.12 of the Credit Agreement for such period; and

(v) on or before the Credit Date, the Administrative Agent has received all other information required by this Issuance Notice and the applicable Application.

[Remainder of page intentionally left blank]

B-2-2
Ladies and Gentlemen:

The undersigned, FitBit, Inc. (the “Borrower”), refers to the Revolving Credit and Guaranty Agreement, dated as of August 13, 2014 (as it may be amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the “Credit Agreement”; the terms defined therein and not otherwise defined herein being used herein as therein defined), among the Borrower, the Guarantors party thereto, the Lenders party thereto (each a “Lender” and collectively, the “Lenders”), Morgan Stanley Senior Funding, Inc., as Collateral Agent, the other agents named therein, Morgan Stanley Bank, N.A., as Issuing Bank and Swing Line Lender, and you, as the Administrative Agent for the Lenders, and hereby gives you notice, irrevocably, pursuant to Section 2.7 of the Credit Agreement, that the undersigned hereby requests to [convert] [continue] the Borrowing of Loans referred to below, and in that connection sets forth below the information relating to such [conversion] [continuation] (the “Proposed [Conversion] [Continuation]”) as required by Section 2.7 of the Credit Agreement:

(i) The Proposed [Conversion] [Continuation] relates to the Borrowing of Loans originally made on , 2015 (the “Outstanding Borrowing”) in the principal amount of $ and currently maintained as a Borrowing of ABR Loans [Eurodollar Loans with an Interest Period ending on ].

(ii) The Business Day of the Proposed [Conversion] [Continuation] is , 201

(iii) The Outstanding Borrowing shall be [continued as a Borrowing of Eurodollar Loans with an Interest Period of [one/two/three/six months]] [converted into a Borrowing of ABR Loans] [Eurodollar Loans with an Interest Period of [one/two/three/six months]].

[The undersigned hereby certifies that no Default or Event of Default has occurred and will be continuing on the date of the Proposed [Conversion] [Continuation] or will have occurred and be continuing on the date of the Proposed [Conversion] [Continuation]].

[Signature Page Follows]
The Borrower has caused this Interest Election Request to be executed and delivered by its duly authorized officer as of the date first written above.

Very truly yours,

FITBIT, INC.

By: __________________________________________
Name: ____________________________
Title: ____________________________

C-2
FORM OF
REVOLVING LOAN NOTE

New York, New York

FOR VALUE RECEIVED, FitBit, Inc., a Delaware corporation (the “Borrower”), hereby promises to pay to [ ] or its registered assigns (the “Revolving Lender”), in Dollars, in immediately available funds, at the office of MORGAN STANLEY SENIOR FUNDING, INC. (the “Administrative Agent”) located at 1 Pierrepont Plaza, 7th Floor Brooklyn, New York, 11201 on the Maturity Date (as defined in the Credit Agreement referred to below) the unpaid principal amount of all Revolving Loans (as defined in the Credit Agreement) made by the Revolving Lender to the Borrower pursuant to the Credit Agreement, payable at such times and in such amounts as are specified in the Credit Agreement.

The Borrower promises also to pay to the Revolving Lender interest on the unpaid principal amount of each Revolving Loan incurred by the Borrower from the Revolving Lender in like money at said office from the date such Revolving Loan is made until paid at the rates and at the times provided in Section 2.12 of the Credit Agreement.

This Note is one of the Revolving Loan Notes referred to in the Revolving Credit and Guaranty Agreement, dated as of August 13, 2014 (as it may be amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the “Credit Agreement”; the terms defined therein and not otherwise defined herein being used herein as therein defined), among the Borrower, the Guarantors party thereto, the Lenders party thereto, the Administrative Agent, Morgan Stanley Senior Funding, Inc., as Collateral Agent, the other agents named therein and Morgan Stanley Bank, N.A., as Issuing Bank and Swing Line Lender, and is entitled to the benefits thereof and of the other Loan Documents (as defined in the Credit Agreement). As provided in the Credit Agreement, this Note is subject to voluntary prepayment, in whole or in part, prior to the Maturity Date and the Revolving Loans may be converted from one Type (as defined in the Credit Agreement) into another Type to the extent provided in the Credit Agreement.

In case an Event of Default (as defined in the Credit Agreement) shall occur and be continuing, the principal of and accrued interest on this Note may be declared to be due and payable in the manner and with the effect provided in the Credit Agreement.

The Borrower hereby waives presentment, demand, protest or notice of any kind in connection with this Note.

THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

[Signature Page Follows]

D-1-1
FOR VALUE RECEIVED, FitBit, Inc., a Delaware corporation (the “Borrower”), hereby promises to pay to [●] or its permitted successors and assigns (the “Swing Line Lender”), in Dollars, in immediately available funds, at the office of MORGAN STANLEY SENIOR FUNDING, INC. (the “Administrative Agent”) located at 1 Pierrepont Plaza, 7th Floor Brooklyn, New York, 11201 on the Maturity Date (as defined in the Credit Agreement referred to below) the unpaid principal amount of all Swing Line Loans (as defined in the Credit Agreement) made by the Swing Line Lender to the Borrower pursuant to the Credit Agreement, payable at such times and in such amounts as are specified in the Credit Agreement.

The Borrower promises also to pay to the Swing Line Lender interest on the unpaid principal amount of each Swing Line Loan incurred by the Borrower from the Swing Line Lender in like money at said office from the date such Revolving Loan is made until paid at the rates and at the times provided in Section 2.12 of the Credit Agreement.

This Note is one of the Swing Loan Notes referred to in the Revolving Credit and Guaranty Agreement, dated as of August 13, 2014 (as it may be amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the “Credit Agreement”; the terms defined therein and not otherwise defined herein being used herein as therein defined), among the Borrower, the Guarantors party thereto, the Lenders party thereto, the Administrative Agent, Morgan Stanley Senior Funding, Inc., as Collateral Agent, the other agents named therein and Morgan Stanley Bank, N.A., as Issuing Bank and Swing Line Lender, and is entitled to the benefits thereof and of the other Loan Documents (as defined in the Credit Agreement). As provided in the Credit Agreement, this Note is subject to voluntary prepayment, in whole or in part, prior to the Maturity Date.

In case an Event of Default (as defined in the Credit Agreement) shall occur and be continuing, the principal of and accrued interest on this Note may be declared to be due and payable in the manner and with the effect provided in the Credit Agreement.

The Borrower hereby waives presentment, demand, protest or notice of any kind in connection with this Note.

THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

[Signature Page Follows]

D-2-1
FORM OF SECURITY AGREEMENT

Provided separately.

E-1
FORM OF COMPLIANCE CERTIFICATE

This Compliance Certificate is delivered to you pursuant to Section 5.1(c) of the Revolving Credit and Guaranty Agreement, dated as of August 13, 2014 (as it may be amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the “Credit Agreement”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among FitBit, Inc., a Delaware corporation (the “Borrower”), the Guarantors from time to time party thereto, the Lenders from time to time party thereto, Morgan Stanley Senior Funding, Inc., as the Administrative Agent (together with its permitted successors in such capacity, the “Administrative Agent”) and as Collateral Agent, the other agents named therein and Morgan Stanley Bank, N.A., as Issuing Bank and Swing Line Lender.

1. I am the duly elected, qualified and acting [Chief Financial Officer][Principal Accounting Officer][Treasurer] or [Controller] of the Borrower.

2. I have reviewed and am familiar with the contents of this Certificate. I am providing this Compliance Certificate solely in my capacity as an officer of the Borrower.

3. I have reviewed the terms of the Credit Agreement and the other Loan Documents. The financial statements for the fiscal [month][year] of the Borrower ended [●] attached hereto as Annex 1 or otherwise delivered to the Administrative Agent pursuant to the requirements of Section 5.1 of the Credit Agreement (the “Financial Statements”) present fairly in all material respects as of the date of each such statement the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied,[subject to normal year-end audit adjustments and the absence of footnotes] 8. No Default has occurred and is continuing as of the date hereof, except for [●] 9.

4. Attached hereto as Annex 2 are the computations showing (in reasonable detail) compliance with the covenant specified therein.

[Signature Page Follows]

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8 To be included only if the Compliance Certificate is certifying the monthly financials.
9 Specify the details of any Default, if any, and any action taken or proposed to be taken with respect thereto.
10 If and to the extent that any change in GAAP that has occurred since the date of the audited financial statements referred to in Section 3.4 of the Credit Agreement had an impact on such financial statements, specify the effect of such change on the financial statements accompanying this Compliance Certificate.

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IN WITNESS WHEREOF, I have executed this Compliance Certificate as of the date first written above.

FITBIT, INC.

By: ________________________________
Name: ______________________________
Title: [Financial Officer]

F-2
[Applicable Financial Statements to be attached if applicable]

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The information described herein is as of [                     , 20    ] 11, (the “Computation Date”) and, except as otherwise indicated below, pertains to the period of four consecutive fiscal quarters ending on the Computation Date (the “Relevant Period”).

### Consolidated Total Leverage Ratio

<table>
<thead>
<tr>
<th>Description</th>
<th>Calculation</th>
<th>Relevant Period</th>
<th>Relevant Date</th>
<th>Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Consolidated Total Debt as at the Computation Date</td>
<td>$ [● ]</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Consolidated Adjusted EBITDA 12 for the Relevant Period ended on the Computation Date</td>
<td>$ [● ]</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Ratio of line a to line b</td>
<td>[● ]:1.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Level for the purposes of the Applicable Margin</td>
<td>Level [1][2][3]</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

11 Insert the last day of the respective fiscal quarter or fiscal year covered by the financial statements which are required to be accompanied by this Compliance Certificate.
12 Attach hereto in reasonable detail the calculations required to arrive at Consolidated Adjusted EBITDA.
Morgan Stanley Senior Funding, Inc., as Administrative Agent
for the Lenders parties to the
Credit Agreement referred to below

1 Pierrepont Plaza
7th Floor
Brooklyn, New York, 11201
Attention: Agency Team

[Date]

Ladies and Gentlemen:

Reference is made to the Revolving Credit and Guaranty Agreement, dated as of August 13, 2014 (as it may be amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the “Credit Agreement”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among FitBit, Inc., a Delaware corporation, the Guarantors from time to time party thereto, the Lenders from time to time party thereto, Morgan Stanley Senior Funding, Inc., as the Administrative Agent (together with its permitted successors in such capacity, the “Administrative Agent”) and as Collateral Agent, the other agents named therein and Morgan Stanley Bank, N.A., as Issuing Bank and Swing Line Lender. In accordance with Section 2.20 of the Credit Agreement, the undersigned hereby requests (i) an extension of the Maturity Date from [________] to [________], 20[______], (ii) the following changes to the Applicable Margin to be applied in determining the interest payable on Loans of, and fees payable under the Credit Agreement to, Consenting Lenders in respect of that portion of their Commitments (and related Loans) extended to such new Maturity Date, which changes shall become effective on [________] and (iii) the amendments or modifications to the terms of the Credit Agreement to be effected in connection with this Maturity Date Extension Request as set forth below, which amendments shall become effective on [________], 20[______]:

[Signature Page Follows]  
G-1
The undersigned consents to the requested amendments to the terms of the Credit Agreement and the requested extension of the Maturity Date. The maximum amount of the Commitment of the undersigned with respect to which the undersigned agrees to the amendments to the terms of the Credit Agreement and the extension of the Maturity Date is set forth under its signature.

Name of Institution:

By
Name: ____________________________
Title: ____________________________

For any Institution requiring a second signature line:

By
Name: ____________________________
Title: ____________________________
FORM OF
COUNTERPART AGREEMENT

This Counterpart Agreement, dated [*] (this “Counterpart Agreement”) is delivered pursuant to that certain the Revolving Credit and Guaranty Agreement, dated as of August 13, 2014 (as it may be amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the “Credit Agreement”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among FitBit, Inc., a Delaware corporation (the “Borrower”), the Guarantors from time to time party thereto, the Lenders from time to time party thereto (the “Lenders”), Morgan Stanley Senior Funding, Inc., as the Administrative Agent (together with its permitted successors in such capacity, the “Administrative Agent”) and as Collateral Agent, the other agents named therein and Morgan Stanley Bank, N.A., as Issuing Bank and Swing Line Lender.

Section 1. Pursuant to Section 5.10 of the Credit Agreement, the undersigned hereby:

(a) agrees that this Counterpart Agreement may be attached to the Credit Agreement and that by the execution and delivery hereof, the undersigned becomes a Guarantor under the Credit Agreement and agrees to be bound by all of the terms thereof;

(b) represents and warrants that each of the representations and warranties set forth in the Credit Agreement and each other Loan Document and applicable to the undersigned is true and correct in all material respects as of the date hereof, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties have been true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and

(c) agrees to irrevocably and unconditionally guaranty to the Administrative Agent for the ratable benefit of the Beneficiaries the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) and in accordance with Article VII of the Credit Agreement.

Section 2. The undersigned agrees from time to time, upon request of the Administrative Agent, to take such additional actions and to execute and deliver such additional documents and instruments as the Administrative Agent may request to effect the transactions contemplated by, and to carry out the intent of, this Counterpart Agreement. Neither this Counterpart Agreement nor any term hereof may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party (including, if applicable, any party required to evidence its consent to or acceptance of this Counterpart Agreement) against whom enforcement of such change, waiver, discharge or termination is sought. Any notice or other communication herein required or permitted to be given shall be given pursuant to Section 10.1 of the Credit Agreement, and all for purposes thereof, the notice address of the undersigned shall be the address as set forth on the signature page hereof. In case any provision in or obligation under this Counterpart Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.
THIS COUNTERPART AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING, WITHOUT LIMITATION, ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK. THE TERMS AND PROVISIONS OF SECTION 10.9(B) OF THE CREDIT AGREEMENT ARE INCORPORATED BY REFERENCE HEREIN AS IF FULLY SET FORTH HEREIN.
IN WITNESS WHEREOF, the undersigned has caused this Counterpart Agreement to be duly executed and delivered by its duly authorized officer as of the date above first written.

[NAME OF SUBSIDIARY]

Name: 
Title: [Responsible Officer]

Address for Notices:


Attention: 
Telecopier

with a copy to:


Attention: 
Telecopier

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ACKNOWLEDGED AND ACCEPTED,
as of the date above first written:

MORGAN STANLEY SENIOR FUNDING, INC.,
as Administrative Agent

By:  
Name:  
Title:  

H-4
EXHIBIT I
FORM OF
SOLVENCY CERTIFICATE

[ ], 20[ ]

THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:

1. I am the [title of a Financial Officer] of FitBit, Inc., a Delaware corporation (the “Borrower”).

2. Reference is made to Revolving Credit and Guaranty Agreement, dated as of August 13, 2014 (as it may be amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the “Credit Agreement”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among FitBit, Inc., a Delaware corporation (the “Borrower”), the Guarantors from time to time party thereto, the Lenders from time to time party thereto, the Administrative Agent (together with its permitted successors in such capacity, the “Administrative Agent”) and as Collateral Agent, the other agents named therein and Morgan Stanley Bank, N.A., as Issuing Bank and Swing Line Lender.

3. I have reviewed the Credit Agreement and other Loan Documents and the contents of this Solvency Certificate and, in connection herewith, have reviewed such other documentation and information and, in my opinion, have made, or have caused to be made under my supervision, such examination or investigation as is necessary to enable me to express an informed opinion as to the matters referred to herein.

4. Based upon my review and examination described in paragraph 3 above, I certify in my capacity as a Financial Officer of the Borrower and not in any individual capacity that as of the date hereof, each Loan Party is, and after giving effect to the transactions contemplated by the Credit Agreement and the other Loan Documents and the incurrence of all Indebtedness, Obligations and obligations being incurred in connection therewith, will be and will continue to be, Solvent.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, the undersigned has hereunto set [his/her] name as of the date first above written.

FITBIT, INC.

Name: 
Title: [Financial Officer]

I-2
Application and Agreement for Irrevocable Standby Letter of Credit

NOTE: Please type applications to ensure legibility and accuracy. Handwritten applications will not be accepted. We reserve the right to return applications for clarification.

Date: mm/dd/yyyy

The undersigned applicant (“Applicant”) hereby requests Morgan Stanley Bank, N.A., Morgan Stanley Senior Funding, Inc., and/or their affiliates or subsidiaries (“Bank”) to issue an irrevocable standby letter of credit (together with any replacements, extensions or modifications, the “Credit”) pursuant to this Application and Agreement for Irrevocable Standby Letter of Credit (this “Application and Agreement”). Applicant agrees that the Credit shall be subject to the terms and provisions of this Application and Agreement.

Applicant/Borrower (Full Name & Address):

Contact Name:
Telephone:
Fax:
Email Address:

As an Accommodation for (if another Party other than Applicant/Borrower) (Full Name & Address):

Contact Name:
Telephone:
Fax:
Email Address:

Is this party related to Applicant? Y □ or N □
If yes, what is the relationship:
If no, why is Applicant applying for a Credit for a non-related party:

Beneficiary (Full Name & Address):

Contact Name:
Telephone:
Fax:
Email Address:

Amount of Credit (in Numbers):
If not in U.S. Dollars, indicate Currency:

Expiration Date (Cannot Exceed 1 Year):
mm/dd/yyyy

Brief Explanation of Underlying Transaction (including Name and Date of Agreement governing Underlying Transaction):

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Y ☐ or N ☐ Expiry date to be automatically extendable ("evergreen") every 1 year, with 60 days notification for non-extension (i.e., 60 days), with a final expiration date of mm/dd/yyyy. After issuance of the Credit, if Applicant desires that Bank give a notice of non-extension under the Credit to Applicant, Applicant should notify the Bank in writing more than 5 business days in advance of the last day on which a timely notice of non-extension may be given to beneficiary. Whether or not requested to do so by Applicant, Bank shall have the right to give such notice or take such action, to fail or refuse to do so, or to fail to retain proof of doing so. If Bank gives such notice or takes such action at Applicant’s request, then Applicant shall obtain beneficiary’s acknowledgement thereof and, in the case of Notice of Termination, return of the original Credit.

Y ☐ or N ☐ Allow for partial draws on this Credit.

Y ☐ or N ☐ Allow this Credit to be transferrable.

Credit to be available for payment against beneficiary’s draft(s) drawn at sight on Bank, accompanied by a signed statement of the beneficiary worded as follows (state wording that is to appear in the statement accompanying the beneficiary’s draft or state “None” if beneficiary’s draft drawn at sight is the only item required for payment):

THE APPLICANT AGREES WITH AND FOR THE BENEFIT OF BANK AS FOLLOWS:

1. Application and Agreement. Applicant affirms that it has fully read and agrees to this Application and Agreement. In consideration of Bank’s issuance of the Credit, Applicant agrees to be bound by the agreements set forth in this Application and Agreement and the terms and conditions of any credit agreement, reimbursement agreement or other agreement between Bank and Applicant with respect to the issuance of letters of credit and the reimbursement of amounts drawn thereunder.

2. Issuance of Credit. Subject to the terms and conditions of this Application and Agreement, Bank may, in its sole and complete discretion, issue the Credit for the account of the Applicant; provided that, the terms and provisions of the Credit and this Application and Agreement therefor shall be satisfactory to Bank in its discretion. Applicant understands and agrees that the Credit will be subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, Publication 600 or any subsequent version currently in effect and in use by Bank (“UCP”) or to the International Standby Practices of the International Chamber of Commerce, Publication 590 or any subsequent version currently in effect and in use by Bank (“ISP98”), at Bank’s discretion and in any event, unless otherwise specified in the Credit, such Credit shall be subject to the laws of the State of New York without reference to the chosen jurisdiction’s provisions regarding conflicts of laws. In issuing the Credit, Bank is expressly authorized to make such changes from the terms set forth in this Application and Agreement as Bank, in its sole and complete discretion, may deem advisable. Applicant is responsible for approving the text of the Credit as submitted to and as issued by Bank and as received by the beneficiary. Bank’s recommendation or drafting of text or Bank’s use or non-use or refusal to use text submitted by Applicant shall not affect Applicant’s ultimate responsibility for the final text of the Credit. Applicant agrees that the Credit shall be conclusively presumed to be in proper form unless Applicant notifies Bank in writing of any inconsistency in the Credit within 3 business days of its submission and issuance.

3. Applicant. The word “Applicant” in this Application and Agreement refers to each signer (other than the Bank) of this Application and Agreement. If this Application and Agreement is signed by more than one Applicant, their obligations under this Application and Agreement shall be joint and several and each Applicant hereby waives all suretyship defenses such Applicant may now or hereafter have with respect to any obligations under this Application and Agreement.

4. Representations and Warranties. Applicant warrants that no transaction involved in connection with this Application and Agreement, if any, is in violation of U.S. Treasury Foreign Assets Control Regulations or any applicable law.

5. Indemnification. Applicant will indemnify and hold Bank (including its officers, directors, employees and agents) harmless from and against (a) all loss or damage arising out of the issuance by Bank, or any other action taken by any such indemnified party in connection with the Credit including any loss or damage arising in whole or in part from the negligence of the party seeking indemnification, but excluding any loss or damage resulting from the gross negligence or willful misconduct of the party seeking indemnification, (b) all costs and expenses (including reasonable attorneys’ fees and allocated costs of in-house counsel and legal expenses) of all claims or legal proceedings arising out of the issuance and all actions arising from or relating

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to issuance by Bank of the Credit or incident to the collection of amounts owed by Applicant hereunder or the enforcement of the rights of Bank hereunder, including, without limitation, legal proceedings related to any court order, injunction, or other process or decree restraining or seeking to restrain Bank from paying any amount under the Credit, and (c) all claims, losses, damages, suits, costs or expenses (including reasonable attorneys’ fees and allocated costs of in-house counsel, and legal expenses) arising out of Applicant’s failure to timely procure licenses or comply with applicable laws, regulations or rules, or any other conduct or failure of Applicant relating to or affecting the Credit.

6. **Electronic Transmissions.** Bank is authorized to accept and process this Application and Agreement, the Credit and any amendments, transfers, assignments of proceeds, consents, waivers and all documents relating to the Credit or the Application and Agreement which are sent to Bank by electronic transmission, including SWIFT, electronic mail, telex, telecopy, telefax, courier, mail or other computer generated telecommunications and such electronic communication shall have the same legal effect as if written and shall be binding upon and enforceable against the Applicant. Bank may, but shall not be obligated to, require authentication of such electronic transmission or that Bank receives original documents prior to acting on such electronic transmission. Separate and independent from any other indemnity set forth in this Application and Agreement, Applicant will indemnify and hold Bank (including its officers, directors, employees and agents) harmless from and against any and all loss, liability, damage or expenses of whatever kind and nature arising from Bank’s acceptance and/or delivery of information by electronic transmission.

7. **Governing Law.** This Application and Agreement will be governed by and interpreted in accordance with the laws of the State of New York. Applicant and the Bank agree, to the extent permitted under applicable law, to waive any right to a trial by jury in any action or proceeding with respect to any dispute or controversy under this Application and Agreement and any credit agreement, reimbursement agreement or other agreement between Bank and Applicant with respect to the issuance of letters of credit and the reimbursement of amounts drawn thereunder and hereby agree that such action or proceeding will be tried before a judge without a jury.

8. **Miscellaneous.** This Application and Agreement shall be binding on Applicant’s heirs, executors, administrators, successors and permitted assigns, and shall inure to the benefit of Bank’s successors and assigns. Any provisions of this Application and Agreement which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. This Application and Agreement may be signed and delivered by facsimile transmission. This Application and Agreement contains the final, complete and exclusive understanding of, and supersedes all prior or contemporaneous, oral or written, agreements, understandings, representations and negotiations between the parties relating to the subject matter and this Application and Agreement.

**Applicant Name:**

**Signature of Authorized Signatory of Applicant:**

**Name of Authorized Signatory (Please Print):**

**Telephone Number:**

( ) -

**Title of Authorized Signatory:**

**Email Address:**
INCREMENTAL COMMITMENT JOINDER AGREEMENT NO. 1

This INCREMENTAL COMMITMENT JOINDER AGREEMENT NO. 1, dated as of October 6, 2014 (as amended, restated, supplemented or otherwise modified from time to time, this “Agreement”), is by and among Barclays Bank PLC (in its capacity as an Incremental Revolving Lender (as defined in the Credit Agreement referenced below), the “Additional Lender”), Morgan Stanley Senior Funding, Inc., as Administrative Agent (the “Administrative Agent”), FitBit, Inc., in its capacity as the Borrower under the Credit Agreement referenced below, and FitBit International, LLC, in its capacity as a Guarantor under the Credit Agreement referenced below.

RECITALS:

WHEREAS, reference is made to the Revolving Credit and Guaranty Agreement, dated as of August 13, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”) among FitBit, Inc., FitBit International, LLC, Morgan Stanley Senior Funding, Inc., as Administrative Agent, and the financial institutions from time to time party thereto as “Lenders” (the “Lenders”) (capitalized terms used but not defined herein have the meanings given to such terms in the Credit Agreement);

WHEREAS, on the terms and subject to the conditions of the Credit Agreement (including, without limitation, Section 2.19 thereof), the Borrower has requested a Commitment Increase in the aggregate amount of $10,000,000 (such Commitment Increase, the “Requested Commitment Increase”); and

WHEREAS, the Additional Lender has agreed to extend the Requested Commitment Increase to the Borrower in accordance with the terms hereof.

AGREEMENT:

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

1. Requested Commitment Increase.

(a) Subject to the terms and conditions set forth herein and in the Credit Agreement and in reliance upon the representations and warranties of the Loan Parties contained herein and in the Credit Agreement, the Additional Lender agrees to provide to the Borrower on the Effective Date, the entire amount of the Requested Commitment Increase. The Requested Commitment Increase shall constitute a Commitment of the Additional Lender and each loan made pursuant to such Requested Commitment Increase shall constitute a Revolving Loan subject to all of the terms and provisions of the Credit Agreement and other Loan Documents pertaining thereto. The Additional Lender shall be deemed to constitute a Lender for all purposes of the Credit Agreement and the other Loan Documents.

(b) Upon the effectiveness of this Agreement, the Credit Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Requested Commitment Increase set forth herein, the status of the Additional Lender as a Lender, and the Commitment of the Additional Lender without the need for execution and delivery of a separate amendment to the Credit Agreement.

2. Representations and Warranties. The Borrower and each other Loan Party hereby represents and warrants to the Administrative Agent and the Additional Lender that, as of the date hereof:

(a) Each of the conditions precedent set forth in Section 2.19 (as applicable) of the Credit Agreement has been satisfied.
(b) This Agreement has been duly authorized, executed and delivered by each Loan Party and constitutes the legal, valid and binding obligation of each Loan Party, enforceable against them in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(c) The execution, delivery and performance of this Agreement and the other documents executed in connection herewith (a) have been duly authorized by all necessary corporate or other action on behalf of each Loan Party and (b) will not (i) contravene any Loan Party’s respective Operating Documents, (ii) except as could not reasonably be expected to have a Material Adverse Effect, violate any Requirements of Law applicable to any Loan Party, (iii) except as could not reasonably be expected to have a Material Adverse Effect, violate or result in a default under any indenture or other agreement or instrument binding upon any Loan Party or their respective assets, or give rise to a right thereunder to require any payment, repurchase or redemption to be made by any Loan Party, or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation thereunder or (iv) result in the creation or imposition of any Lien on any asset of any Loan Party, except Liens created under the Loan Documents and the ABL Documents.

(d) The representations and warranties of the Borrower set forth in the Credit Agreement and the other Loan Documents are true and correct in all material respects (other than to the extent qualified by materiality or “Material Adverse Effect”, in which case, such representations and warranties are true and correct in all respects) on and as of the Effective Date except that (i) for purposes of this clause (d), the representations and warranties contained in Section 3.4(a) of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 5.1 of the Credit Agreement and (ii) to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date (other than to the extent qualified by materiality or “Material Adverse Effect”, in which case, such representations and warranties shall be true and correct in all respects).

(e) No Default or Event of Default has occurred and is continuing or shall result from the occurrence of the Effective Date.

3. Notice. For purposes of the Credit Agreement, the initial notice address of the Additional Lender shall be as set forth below its signature below.

4. Conditions to Effectiveness. This Agreement shall become effective upon the date (the “Effective Date”) on which all of the following conditions precedent shall have been satisfied or duly waived:

(a) the execution and delivery of this Agreement by the Loan Parties, the Additional Lender and the Administrative Agent;

(b) the receipt by the Administrative Agent and the Additional Lender, as applicable, of all fees and reimbursable expenses that have been invoiced as of the Effective Date (or, in the case of reimbursable expenses, at least 3 Business Days prior to the Effective Date) that are due and payable by any Loan Party under the Credit Agreement;
(c) the receipt by the Administrative Agent and the Additional Lender of a certificate executed by a Responsible Officer of the Borrower (i) certifying that all representations and warranties set forth in Section 2 are true and correct, (ii) attaching resolutions approving and authorizing the execution and delivery of this Agreement and certifying on behalf of itself and each of the other Loan Parties that the Operating Documents of each Loan Party have not been amended or otherwise modified since the Closing Date and (iii) demonstrating that after giving effect to the incurrence of the Requested Commitment Increase, and assuming a full drawing of such Commitment Increase, but without “netting” the cash proceeds thereof, the Consolidated Total Leverage Ratio, calculated on a Pro Forma Basis as of the last day of the fiscal quarter most recently ended for which financial statements are required to be delivered pursuant to Section 5.1 of the Credit Agreement, shall not exceed the maximum Consolidated Total Leverage Ratio permitted under Section 6.12 of the Credit Agreement for such period.

(d) The Additional Lender and the Administrative Agent shall have received the following (in each case, in form and substance reasonably satisfactory to the Additional Lender): (i) a legal opinion of counsel to the Loan Parties substantially consistent with the most recent legal opinion delivered to the Administrative Agent and (ii) a Solvency Certificate substantially in the form attached as Exhibit I to the Credit Agreement, certifying that Borrower, individually and together with its Subsidiaries, is and will be Solvent after giving effect to this Agreement.

(e) The Additional Lender shall have received, at least three Business Days prior to the Effective Date, all documentation and other information about the Loan Parties and Restricted Subsidiaries that it shall have reasonably determined is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the USA Patriot Act.

(f) The Administrative Agent shall have received for the account of the Additional Lender an upfront fee equal to 0.50% of the Commitment Increase provided by such Additional Lender.

5. Reaffirmation. Each Loan Party, as of the Effective Date, hereby (a) acknowledges and agrees that the Requested Commitment Increase is a Commitment under the Credit Agreement and that the Additional Lender is a Lender under the Credit Agreement, and that all of such Loan Party’s obligations under the Loan Documents to which it is a party are reaffirmed and remain in full force and effect on a continuous basis, (b) acknowledges, agrees and reaffirms that each Lien granted by it to the Collateral Agent for the benefit of the Secured Parties and the guaranties made in favor of the Administrative Agent by Loan Parties under the Credit Agreement and the other Loan Documents are, and shall remain, in full force and effect after giving effect to this Agreement, (c) agrees that the Secured Obligations shall be deemed to include all new Obligations arising pursuant to this Agreement and (e) agrees that the Guaranteed Obligations shall be deemed to include all new Obligations arising pursuant to this Agreement.

6. Amendment, Modification and Waiver. This Agreement may not be amended, modified or waived except by an instrument or instruments in writing signed and delivered on behalf of each of the parties hereto; provided, however, that from and after the date hereof any amendments, modifications or waivers shall be governed by the terms of the Credit Agreement.

7. Entire Agreement. This Agreement, the Credit Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties or any of them with respect to the subject matter hereof.
8. GOVERNING LAW. ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION, SUIT, PROCEEDING OR CLAIM ARISING IN CONNECTION WITH OR AS A RESULT OF ANY MATTER REFERRED TO IN THIS AGREEMENT LETTER IS HEREBY IRREVOCABLY WAIVED BY THE PARTIES HERETO. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK. The jurisdiction and waiver of venue provisions in Section 10.9 of the Credit Agreement are incorporated herein by reference.

9. Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

10. Existing Revolving Loans. On the Effective Date, pursuant to Section 2.19(b) of the Credit Agreement, the Administrative Agent shall reallocate the Revolving Loans outstanding immediately prior to the Effective Date (the “Existing Revolving Loans”) such that each Lender with a Commitment assigns to the Additional Lender, and the Additional Lender purchases from each of the Lenders, at the principal amount thereof (together with accrued interest), such interests in the Existing Revolving Loans as shall be necessary in order that, after giving effect to all such assignments and purchases, such Existing Revolving Loans will be held by existing Lenders and the Additional Lender ratably in accordance with their Commitments after give effect to the Effective Date and the Requested Commitment Increase.

11. Status as a Loan Document. (a) This Agreement constitutes a Loan Document and joinder agreement, as described in Section 2.19(a)(4) of the Credit Agreement. As of the Effective Date, each reference in the Credit Agreement to “this Agreement,” “hereunder,” “hereof,” “herein,” or words of like import, and each reference in the other Loan Documents to the Credit Agreement (including, without limitation, by means of words like “thereunder”, “thereof” and words of like import), shall mean and be a reference to the Credit Agreement as amended by this Agreement.

(b) The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Agent, any Lender or any Issuing Bank under the Credit Agreement or any Loan Document, or constitute a waiver or amendment of any other provision of the Credit Agreement or any Loan Document (as amended hereby) except as and to the extent expressly set forth herein.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]
IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed as of the date set forth above.

**BARCLAYS BANK PLC**, as Additional Lender

By: /s/ Vanessa Kurbatskiy

Name: Vanessa Kurbatskiy

Its: Vice President

Notice Address:

745 Seventh Avenue
New York, NY 10019
Attn: Luke Syme

Incremental Commitment Joinder Agreement No. 1
Incremental Commitment Joinder Agreement No. 1

MORGAN STANLEY SENIOR FUNDING, INC.

as Administrative Agent

By: /s/ Jonathon Rauen

Name: Jonathon Rauen

Its: Authorized Signatory
FITBIT, INC., as the Borrower

By: /s/ William Zerella
Name: William Zerella
Its: Chief Financial Officer

FITBIT INTERNATIONAL, LLC

By: FitBit, Inc.
Its: Sole Member

By: /s/ William Zerella
Name: William Zerella
Its: Chief Financial Officer

Incremental Commitment Joinder Agreement No. 1
This Counterpart Agreement, dated April 10, 2015 (this “Counterpart Agreement”) is delivered pursuant to that certain the Revolving Credit and Guaranty Agreement, dated as of August 13, 2014 (as it may be amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the “Credit Agreement”); the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among FitBit, Inc., a Delaware corporation (the “Borrower”), the Guarantors from time to time party thereto, the Lenders from time to time party thereto (the “Lenders”), Morgan Stanley Senior Funding, Inc., as the Administrative Agent (together with its permitted successors in such capacity, the “Administrative Agent”) and as Collateral Agent, the other agents named therein and Morgan Stanley Bank, N.A., as Issuing Bank and Swing Line Lender.

Section 1. Pursuant to Section 5.10 of the Credit Agreement, the undersigned hereby:

(a) agrees that this Counterpart Agreement may be attached to the Credit Agreement and that by the execution and delivery hereof, the undersigned becomes a Guarantor under the Credit Agreement and agrees to be bound by all of the terms thereof;

(b) represents and warrants that each of the representations and warranties set forth in the Credit Agreement and each other Loan Document and applicable to the undersigned is true and correct in all material respects as of the date hereof, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties have been true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and

(c) agrees to irrevocably and unconditionally guaranty to the Administrative Agent for the ratable benefit of the Beneficiaries the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) and in accordance with Article VII of the Credit Agreement.

Section 2. The undersigned agrees from time to time, upon request of the Administrative Agent, to take such additional actions and to execute and deliver such additional documents and instruments as the Administrative Agent may request to effect the transactions contemplated by, and to carry out the intent of, this Counterpart Agreement. Neither this Counterpart Agreement nor any term hereof may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party (including, if applicable, any party required to evidence its consent to or acceptance of this Counterpart Agreement) against whom enforcement of such change, waiver, discharge or termination is sought. Any notice or other communication herein required or permitted to be given shall be given pursuant to Section 10.1 of the Credit Agreement, and all for purposes thereof, the notice address of the undersigned shall be the address as set forth on the signature page hereof. In case any provision in or obligation under this Counterpart Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

THIS COUNTERPART AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING, WITHOUT LIMITATION, ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND
ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK. THE TERMS AND PROVISIONS OF SECTION 10.9(B) OF THE CREDIT AGREEMENT ARE INCORPORATED BY REFERENCE HEREIN AS IF FULLY SET FORTH HEREIN.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, the undersigned has caused this Counterpart Agreement to be duly executed and delivered by its duly authorized officer as of the date above first written.

FITSTAR, INC.

/s/ James Park
Name: James Park
Title: President, Chief Executive Officer and Secretary

Address for Notices:
FitStar, Inc.
80 Langton Street
San Francisco, California 94103
Attention: Meena Srinivasan
Email:

with a copy to:
Fenwick & West LLP
801 California Street
Mountain View, California
Attention: David Michaels
Email:

[Signature Page to Counterpart Agreement]
ACKNOWLEDGED AND ACCEPTED,
as of the date above first written:

MORGAN STANLEY SENIOR FUNDING, INC., as
Administrative Agent

By: /s/ Stephen B. King
Name: Stephen B. King
Title: Vice President

[Signature Page to Counterpart Agreement]
The names of the Registrant's subsidiaries are omitted. Such subsidiaries would not, if considered in the aggregate as a single subsidiary, constitute a significant subsidiary within the meaning of Item 601(b)(21)(ii) of Regulation S-K.
CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of Fitbit, Inc. of our report dated March 2, 2015 relating to the financial statements of Fitbit, Inc., which appears in such Registration Statement. We also consent to the reference to us under the heading “Experts” in such Registration Statement.

/s/ PricewaterhouseCoopers LLP
San Francisco, California
May 7, 2015